SUPREME COURT OF THE UNITED STATES.

No. 175.

LAUREN A. NOYES, APPELLANT,

vs.

WRIGHT C. HALL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Saturday, the eighth day of August, in the July term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

WILLIAM H. BRADLEY,
Clerk.

WRIGHT. C. HALL
v. } In chancery.
LAUREN. A. NOYES.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fourteenth day of December, A. D. 1872, came said complainant, by J. Henry Truman, his solicitor, and filed in the office of the clerk of the circuit court of the United States for said northern district of Illinois, at Chicago, in the district aforesaid, his bond for costs, and also at the same time filed his bill of complaint in said-entitled cause, which said bond and bill are, respectively, in
2 the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1872.

WRIGHT C. HALL
vs. } In chancery.
LOREN. A. NOYES.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against his property for any costs taxed against him.

Dated this 14th day of December, A. D. 1872.

J. HENRY TRUMAN.

(Endorsed:) Filed Dec. 14th, A. D. 1872. W'm H. Bradley, clerk.

Bill of complaint.

In the circuit court of the United States for the northern district of Illinois. Of the December term, 1872.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the honorable the judges of the circuit court of the United States for the northern district of Illinois:

3 Wright C. Hall, a resident of Ogle County, in the State of Illinois, and a citizen of said State, brings this his bill of com-

plaint against Lauren. A. Noyes, a citizen of the State of Massachusetts.

And thereupon your orator complains and says, that on the 4th day of June, A. D. 1859, one Luther Hall, the father of your orator, was seized in fee simple of a certain parcel of land situated in said county of Ogle and State of Illinois, described as follows, to wit, the east half (½) of the northwest quarter (¼) of section eighteen, (18,) in township twenty-five (25) north, range eleven (11) east of the fourth principal meridian, and held the same under and by a direct and perfect chain of conveyances from the United States theretofore of record in the office of the recorder of deeds in and for said county of Ogle and State of Illinois; and that, being so seized, the said Luther Hall, on the day and year aforesaid, entered into an agreement in writing with your orator, in and by which it was stipulated that, in consideration of the payment by your orator of the sum of three thousand dollars, with interest at six per cent. per annum, to the said Luther Hall, and of the payment of all taxes to be assessed upon the several parcels of land in said agreement in writing mentioned, in the manner therein specified, the said Luther Hall would, or his heirs or assigns should, convey to your orator by a
4 good and sufficient deed all of said premises as hereinbefore described and other parcels of land in said agreement set out, all of which will more fully and particularly appear upon inspection of said written agreement, a true copy of which, hereto annexed and marked for reference "Exhibit A," your orator craves leave to make a part of this his bill of complaint.

And your orator further shows, in respect to said agreement in writing, that it was, on or about the day aforesaid, duly executed and delivered by the said Luther Hall for the purposes therein expressed, and that your orator, under and by reason of the terms of said agreement, within a short time thereafter, and prior to the first day of the year 1861, entered upon and took possession of said premises, and has remained in possession thereof hitherto, and that he has heretofore observed and performed all and singular the covenants and agreements by him in said written agreement made.

And your orator shows that on the 10th day of February, 1864, the said Luther Hall and Olive Hall, his wife, made their certain deed of that date, and duly executed, acknowledged, and delivered the same to your orator, in and by which said deed they conveyed to said your orator as of an estate in fee-simple said premises hereinbefore described, which said deed was afterwards, to wit, on the 19th day of February, in the same
5 year, filed for record in the office of the recorder for said county of Ogle, and recorded in book 50 of deeds, at page 157, a true copy of which deed is hereto annexed, marked "Exhibit B," and made a part of this bill.

And your orator shows that on the 26th day of April, A. D. 1858, the said Luther Hall and Olive Hall, his wife, executed and delivered a certain mortgage-deed to Lauren. A. Noyes, conveying said premises to secure the payment of two promissory notes of even date therewith, for the sums of five hundred and forty and five hundred and thirty-five dollars, payable, respectively, in one and two years from date, with interest thereon; a copy of which mortgage is hereto annexed and made a part of this bill of complaint.

That afterwards and, as your orator is informed and believes, after both of said notes became due and payable, the said Lauren. A. Noyes transferred said notes and mortgage to Samuel L. Woodward, and that the said Samuel L. Woodward afterwards, and on or about the first day of

May, 1861, filed a bill for the foreclosure of said mortgage in the circuit court of the United States for the northern district of Illinois, at the May term of said court, making the said Luther Hall and his wife, Olive Hall, only parties defendant thereto.

That no appearance being entered in said cause by said defendants, and no answer or defence thereto made, said bill was taken as
6 confessed, and afterwards, to wit, on the 10th day of June, 1861, decree passed therein; and that on the 18th day of October, 1861, said premises were offered at auction, by or under the direction of J. Tilden Moulton, master in chancery of said court, and sold to one Daniel N. Pickering, at Oregon City, in the county of Ogle, in said State of Illinois, for the sum of four hundred dollars, which sum, together with proceeds of other lands by them sold, satisfied said debt in full. And that the said J. Tilden Moulton afterwards, on the same day, executed and delivered to the said Daniel N. Pickering a master's deed, conveying said premises and all and singular the appurtenances thereto belonging, which said deed was duly acknowledged and recorded in the office of the recorder for said Ogle County, March 14th, 1862, in book 27 of deeds, at page 633.

And your orator shows that in and by the said decree, as your orator is informed and believes, the said defendants, Luther Hall and Olive Hall, or one of them, were directed to pay to the said Samuel Woodward the sum of thirteen hundred and sixty-three dollars, with interest at six per cent. per annum from the date of said decree to the date of such payment, and further pay and satisfy all the costs and charges of said suit within the term of one hundred days from the said date
7 of said decree, and that in default of such payment the said J. T. Moulton, master in chancery, should, after due advertisement, sell said premises at public auction.

And your orator shows that it was, he is informed and believes, decreed that the said defendants, namely, the said Luther Hall and Olive Hall, and all persons claiming through or under them, should thereby be forever barred and foreclosed of and from all equity of redemption or claim in and to said premises, and every part and parcel thereof.

And your orator further shows that afterwards, to wit, on the 1st day of September, 1871, by their deed of that date, the said Daniel N. Pickering, purchaser of said mortgaged premises at said master's sale, and his wife, conveyed said premises to the said Loren. A. Noyes, the original mortgagee of said premises and defendant herein.

And your orator shows that, at the time when said suit hereinbefore mentioned was commenced, your orator had already paid to said Luther Hall, as part of the purchase-money for said premises under the provisions of said contract, about the sum of one thousand dollars, and that he was at said time and at the date of said decree and sale in sole possession of said premises, and of every part and parcel thereof, and that
8 he had at that time made many and valuable improvements thereon. That the said Samuel Woodward, Daniel N. Pickering, and Loren. A. Noyes were, at all of said times, fully advised of your orator's interest in said premises, and of the fact of his possession, yet did not notify your orator of the pendency of said suit, or make him a party thereto, and that the said Loren. A. Noyes, at the date of the execution of said deed of said premises from Daniel N. Pickering to said Noyes, was fully informed of the interest of your orator therein, of his possession, and of all the circumstances attending.

And your orator shows that on or about the first day of October, of the current year, 1872, the said Loren. A. Noyes filed in the circuit court

of the United States for the northern district of Illinois his declaration in an action of ejectment wherein your orator was made defendant to recover the possession of said premises; that a writ of summons issued out of said court in said action, returnable to the October term, 1872, and was duly served upon your orator, and that he filed his plea of the general issue therein on the first day of said term. All of which will more fully appear by a reference to the records of said court in said action.

9 And your orator shows that said Lauren Noyes neither claims nor has any other nor further interest or title in and to said premises than that derived under said decree of foreclosure and the several conveyances hereinbefore cited, and that such title is subject to the right of your orator to redeem said premises.

And your orator says that he is, and has been at all times since the sale of said premises, ready and willing and anxious to redeem the same from the purchaser thereof, and that he has heretofore offered to redeem the same of the said defendant by payment of the said sum of four hundred dollars paid therefor, together with interest thereon at the rate of ten per cent. per annum from the date of said sale to such tender of redemption therefrom; and that said defendant refused and still refuses to accept such payment in redemption of said premises, or to release the claim and title thereto so as aforesaid by him acquired. In consideration whereof your orator prays that he may be declared entitled to redeem said mortgaged premises by the payment to said defendant, or into the hands of the clerk of this court, within a time to be fixed by the decree herein to be rendered, of the amount of the purchase-money of said mortgaged premises at said master's sale, with interest

10 thereon; that an account may be taken to determine the amount so by your orator to be paid for the redemption of said premises. That by said decree, and upon payment of said redemption money as required, said defendant, and all persons claiming or to claim by, through, or under him, be forever barred from setting up or asserting any claim to or interest in said premises, or any part thereof, by reason of said mortgage, or the decree of foreclosure thereupon obtained, or the sale thereunder had.

That said defendant be by said decree directed, upon payment of the amount of said redemption money as required, and within a time to be fixed by the court, to execute and deliver to your orator a deed conveying all interest and title in and to said premises so acquired and possessed by him; and that in default of his so doing the master in chancery of this court be directed to execute and deliver a deed conveying to your orator all the interest and title in said premises acquired and possessed by said defendant as aforesaid.

That, in the mean time, the defendant, his agents and attorneys, may be enjoined from further proceeding in said suit, to wit, in a suit entitled "Loren. A. Noyes vs. Wright C. Hall, in ejectment in the

11 circuit court of the United States for the northern district of Illinois, of the October term," and from commencing or prosecuting any other proceedings at law against your orator for the recovery of the possession of said premises, or from obtaining the issuance of any writ or process of restitution therein; and that your orator may have such other and further relief in the premises as to the court may seem meet.

And your orator prays that he may have not only a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said defendant, Loren. A. Noyes, to restrain him, his agents

and attorneys, from further prosecuting said proceedings at law, but also a writ of subpœna summoning the said defendant to be and appear before this court on a day in said writ to be fixed, and full, true, and perfect answer make to all the averments of this bill, without oath—answer under oath being particularly waived—and further to abide by and perform such further order, direction, and decree as may by the court be made.

WRIGHT C. HALL.

J. HENRY TRUMAN, *Sol'r for Compl't.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

12 Wright C. Hall, being duly sworn, says that he has read the foregoing bill of complaint by him subscribed; that he is fully advised of the contents thereof, and that the same are true.

Subscribed and sworn to before me this 2d day of December, 1872.

[SEAL.] HOSMER P. HOLLAND,
U. S. Commissioner.

Exhibit A.

Articles of agreement made this fourth day of June, A. D. 1859, between Luther Hall, of Byron, Ogle County, State of Illinois, of the first part, and Wright C. Hall, of the same place, of the second part, witnesseth: That, if the party of the second part shall make the payments on his part to be made, the said party of the first part agrees to convey by good and sufficient deed to the party of the second part, or his legal representatives, the following tract or parcel of land, viz: So much of section seven as lies south of the road between the Stone Church and the west line of L. L. Case's farm, and the west half of the NE. ¼ of sec. 18, and the E. ½ of NW. ¼ of said eighteen, T. 25, R. 11 E. 4 P. M., except nine acres deeded to L. L. Case, being one hundred & sixty acres, more or less.

13 The said party of the second part agrees to pay three thousand , in manner following, to wit: Oct. 30th, 1859, $200, & interest on $3,000 at 6 p'r cent. for one year; Oct. 30th, 1860, $200; Oct. 30, 1861, $500; Oct. 30, 1862, $500; Oct. 30, 1863, $500; *Oct.* 30, 1863, $500; Oct. 30, 1864. $500; Oct. 30, '65, $600. The deed shall be made and delivered on demand after the three first payments ($900) are made and a mortgage received for the remaining payments of $2,100, and the party of the second is to pay all taxes on said land. It is mutually agreed that all covenants herein contained shall be equally binding on the heirs and assigns of both parties.

In witness of whereof the parties have hereunto set their hands & seals the date above written.

(Signed) LUTHER HALL.
(Signed) WRIGHT C. HALL.

Signed, sealed, and delivered in presents of—
(Signed) HOLLIS S. HALL.

EXHIBIT B.

This indenture, made this tenth day of February, in the year of our Lord one thousand eight hundred and sixty-four, between Luther Hall & Olive Hall, his wife, of the town of Byron, county of Ogle, and State

of Illinois, of the first part, and Wright C. Hall, of the town of Byron, county of Ogle, and State of Illinois, of the second part, witnesseth:

That the said party of the first part, for and in consideration of
14 the sum of five hundred dollars to us in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents do grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, and to his heirs and assigns forever, all the right, title, and interest of the said party of the first part, in law or equity, either in possession or expectancy, in and to the following-described lands and premises, situated in the county of Ogle and State of Illinois, namely: The east half of the northwest quarter of section eighteen, town. twenty-five, range eleven, east of the fourth principal meridian:

To have and to hold the same, with all the privileges and appurtenances of whatsoever name or nature thereunto belonging, unto the said party of the second part and to his heirs and assigns forever; and the said Luther & Olive Hall, party of the first part, hereby expressly waive and release any and all right, claim, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads for sale on execution, or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the general assem-
15 bly of this State of Illinois A. D. eighteen hundred and fifty one, and approved February 11th, A. D. 1851, and an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by said assembly A. D. 1857, and approved February 17th, A. D. 1857.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

LUTHER HALL. [SEAL.]
OLIVE HALL. [SEAL.]

Executed in presence of—
HOLLIS S. HALL.
LUCIUS READ.

STATE OF MISSOURI,
Ogle County:

I, Lucius Read, a notary public in and for said county, in the State aforesaid, do hereby certify that Luther & Olive Hall are personally known to me as the same persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the use and purpose therein set forth, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption, under any and all homestead exemption laws, so called, of the State. And the said Olive Hall, personally known to me to be the wife of the said Luther Hall, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made
16 known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower, and all right, title, and interest in and to the lands and tenements therein mentioned; and her rights under the homestead exemption laws, so called, having been by me fully explained and made known to her, acknowledged that she expressly waived and released all right, claim, benefit,

privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act passed by general assembly of the State of Illinois A. D. 1851, and approved Feb. 11th, A. D. 1851, and an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by the general assembly A. D. 1857, and approved February 17th, A. D. 1857, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this tenth day of February, A. D. 1864.

LUCIUS READ,
Notary Public.

(Endorsed:) Filed Dec. 14, 1872. W'm H. Bradley, cl'k.

17 And on the same day, to wit, the 14th day of December, A. D. 1872, a writ of subpœna, together with a memorandum and notice for application for injunction issued out of said clerk's office against said defendant, which said writ, memorandum, and notice, together with the return of the marshal endorsed thereon, are in the words and figures following, to wit:

Writ of subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to Lauren. A. Noyes, greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of January next, to answer the bill of complaint of Wright C. Hall this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this fourteenth day of December, in the year of our Lord one thousand
18 eight hundred and seventy-two, and of our Independence the ninety-seventh.

[SEAL.] W'M H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed, and a decree entered accordingly.

W'M H. BRADLEY, *Clerk.*

Circuit court of the United States of America, northern district of Illinois, ss:

WRIGHT C. HALL *vs.* LOREN. A. NOYES. } In chancery. January term, A. D. 1872.

To Henry C. Noyes and Sidney Thomas, attorneys for Loren. A. Noyes:

Take notice that the complainant will move this honorable court on

the sixth day of January, A. D. 1873, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within-named defendant, Wright C. Hall, in accordance with the prayer of the bill herein.

Yours, &c.,

J. HENRY TRUMAN,
Compl't's Solicitor.

Dated this 14 day of December, A. D. 1872.

19 I served the within subpœna, with notice of motion thereon endorsed, upon Henry C. Noyes and Sidney Thomas, the attorneys of Lauren. A. Noyes, therein named, by delivering to each of them personally a true copy thereof, on the 14th day of December, A. D. 1872.

B. H. CAMPBELL,
U. S. Marshal,
By S. H. TOURTELOTTE,
Deputy.

(Endorsed:) Filed Dec. 27th, A. D. 1872. W'm H. Bradley, clerk.

Afterwards, to wit, on the 6th day of March, A. D. 1873, said defendant, by his solicitor, filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the northern district of Illinois.

The answer of Lauren. A. Noyes, the defendant, to the bill of complaint of Wright C. Hall, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other im-
20 perfections in the said complainant's bill of complaint contained, for answer thereto, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, this defendant, answering, says he admits that on the fourth day of June, A. D. 1859, Luther Hall, the father of the complainant, was seized in fee-simple of a certain piece or parcel of land situated in the county of Ogle, and State of Illinois, described as follows, to wit, the east half (½) of the northwest quarter (¼) of section number eighteen, (18,) in township twenty-five (25) north, of range eleven, (11,) east of the fourth (4) principal meridian, and held the same under and by a direct and perfect title and conveyance from the United States Government, subject only to a certain indenture of mortgage dated the twenty-sixth day of April, A. D. 1858, and filed for record May 17th, 1858, in the office of the recorder of deeds of Ogle County, in the State aforesaid, in book No. 2 of deeds, on page 585, wherein the said Luther Hall and Olive Hall, his wife, were mortgagors, and this defendant, Lauren. A. Noyes, was mortgagee, said mortgage being duly signed, acknowledged, executed, and delivered on the day of its date according to law, at which time the said

Luther Hall was seized of said land in fee-simple as aforesaid. And this defendant, further answering, says that he has no personal knowledge concerning the alleged contract of sale to Wright C. Hall set
21 forth in said bill of complaint, which contract purports to have been made and entered into nearly one year after the delivery to this defendant of the above-described mortgage, and that this defendant had no knowledge, information, or belief of the existence of any such contract until the commencement of this suit, and prays, if the same shall be considered material in this cause, that the complainant be required to make full proof thereof; and whether the said Wright C. Hall has performed his part of said contract, if any such contract in fact existed, and whether entitled to any benefit or advantage by reason thereof, as between the complainant and the said Luther Hall, the defendant has no knowledge, information, or belief, and therefore denies the same to be true, and prays that complainant may be held to strict proof of the same. And this defendant, further answering, denies that Wright C. Hall was in possession of the said premises, or any part thereof, at the time of the commencement of said suit or proceedings to foreclose the above described mortgage, as set forth in said bill of complaint, or at any other time during the pendency of said suit.

And this defendant, further answering, says that he has no knowledge, information, or belief of the alleged deed from Luther Hall and Olive Hall, his wife, to the said Wright C. Hall, said to have been ex-
22 ecuted on the tenth day of February, A. D. 1864, and if any such deed was executed it was not recorded, and this defendant has no knowledge of the same, and therefore denies the existence of any such deed, and prays that the complainant be held to strict proof thereof. And this defendant, further answering, admits he received the mortgage and notes from Luther Hall as set forth in said bill of complaint, and that such proceedings were had with reference to the same that the said premises were sold by said master in chancery, and that the defendant's sole right, title, and interest therein is derived from the said sale in such foreclosure suit set forth in the bill of complaint; but this defendant denies that Wright C. Hall was in possession of the said premises at any time prior to the date of said sale, or that it become necessary for any reason to make him a party to said foreclosure suit. And this defendant, further answering, says that by reason of his purchase of said premises and the deed or deeds of conveyance of said premises, as set forth in said bill of complaint, the said master in chancery and this defendant became the owner in fee-simple absolute to the property in question, and that he has been at all times so recognized by the said Wright C. Hall, and that after said sale and purchase of the premises by this defend-
23 ant the said Wright C. Hall accepted and recognized this defendant as his landlord, and became the tenant of this defendant of said premises, and paid rent to this defendant therefor. The defendant humbly submits that the complainant has no interest in the said premises or matters in question in this suit as to entitle him to sustain his said suit, and the defendant craves the same benefit from this defence as if he had demurred to the said bill. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, main-

tain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SIDNEY THOMAS,
Def't's Sol'r.

(Endorsed:) Filed March 6, 1873. W'm H. Bradley, cl'k.

24 Afterwards, to wit, on the 18th day of March, A. D. 1873, said complainant, by his solicitors, filed in said clerk's office his replication in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

In the circuit court of the United States for the northern district of Illinois. In chancery.

The replication of Wright C. Hall, complainant, to the answer of Lauren. A. Noyes, defendant.

This repliant, saving and reserving all benefit of exception to said answer, for replication thereunto says, that he does and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendant is evasive, uncertain, and insufficient in law to be answered unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in law to be replied, and not herein well traversed, avoided, confessed, or replied unto, is true; all which matters and things this repliant is ready to maintain and prove as the court may direct.

Wherefore he humbly prays as he has heretofore prayed.

J. HENRY TRUMAN,
Sol'r for Compl't.

(Endorsed:) Filed March 18, 1873. W'm H. Bradley, cl'k.

25 Afterwards, to wit, on the 23rd day of July, A. D. 1874, in the July term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

WRIGHT C. HALL
vs. } In chancery.
LAUREN. A. NOYES.

Now come the parties, by their solicitors; and this cause now coming on to be heard upon the pleadings and proofs herein, and the court, after hearing the same, not being now fully advised in the premises, takes time to consider.

And afterwards, to wit, on the 8th day of August, A. D. 1874, in the said July term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

WRIGHT C. HALL
vs. } In chancery.
LAUREN. A. NOYES.

This cause coming this day to be heard on the pleadings and the tes-

timony taken and filed therein, together with the stipulation of the parties, made and entered by their respective solicitors, waiving reference to a master, after argument of counsel for both complainant and defendant—

It appearing to the court that the material allegations of said
26 bill are true; that the complainant was, on or about the first day of May, A. D. eighteen hundred and sixty-one, in full and open possession of the premises in said bill described as the east half of the northwest quarter of section eighteen, township twenty-five north, of range eleven, east of the third principal meridian, under an unrecorded contract of purchase made by Luther Hall and Olive Hall, his wife, subject, however, to the terms of a certain indenture of mortgage, recorded in the recorder's office of Ogle County, State of Illinois, in book V, at page 585, made by said Luther Hall and Olive Hall to the defendant, to secure the payment of the sum of two hundred and seventy-five dollars, with interest thereon; that all the provisions of said unrecorded contract were fulfilled by said complainant, and that the said Luther Hall and Olive Hall, in pursuance thereof, conveyed said premises to the complainant, by their deed recorded in the recorder's office of Ogle County aforesaid on the nineteenth day of February, A. D. eighteen hundred and sixty-four; that proceedings were commenced by the legal holder of said notes and mortgage in the circuit court of the United States for the northern district of Illinois, on the chancery side thereof, at the May term, A. D. eighteen hundred and sixty-one, and while said complainant was in possession of said premises as aforesaid, against Luther and Olive Hall only for the foreclosure of said mortgage; that a de-
27 cree was rendered therein for foreclosure, according to the prayer of said bill, and that said premises were afterward sold, under authority of said decree, for the sum of four hundred dollars, and that said defendant afterwards, and after the record of said deed from Luther and Olive Hall to said complainant, conveying said premises, acquired the interest therein sold and conveyed under said decree as aforesaid.

And it further appearing to the court that the remainder of said mortgage debt, after the sale of said premises as aforesaid, has been fully satisfied, together with all costs and interest, and that the only sum specifically chargeable against said premises is the sum of four hundred dollars, with interest thereon at the rate of ten per cent. per annum, according to the terms of said mortgage indebtedness, from the date of said sale, to wit, the sum of nine hundred and thirteen dollars and thirty-three cents:

It is ordered, adjudged, and decreed that the said complainant is owner in fee of said premises, subject to the payment of the sum aforesaid, due and chargeable under said mortgage; and that the claim and interest of said defendant is subject to the equity of said complainant to redeem. And it is ordered, adjudged, and decreed that said complainant, within the period of one hundred days from the date of
28 making and entering hereof, pay to the said defendant, or to his solicitor, or to the clerk of this court, the said sum of nine hundred and thirteen dollars and thirty-three cents, together with the costs of this suit, to be taxed by the clerk; and that in default of such payment his said bill stand from thenceforth dismissed at his costs. And it is further ordered, adjudged, and decreed that the said defendant, within the period of thirty days after the payment of said sum of money as aforesaid, execute and deliver to the said complainant, or such person as he may appoint, a good and sufficient deed, conveying said premises, free and clear of all incumbrances caused or permitted by him, or any

person claiming by or under him; and that if he refuse or neglect so to do within the period limited, then that Henry W. Bishop, esq., master in chancery of this court, on presentation by the complainant, or his appointee, of the receipt or certificate showing the payment of said sum as prescribed, execute such deed.

And thereupon the defendant, by his solicitor, prays an appeal to the Supreme Court, which is allowed upon filing bond in the sum of twenty-five hundred dollars, with security to be approved by the court.

Afterwards, to wit, on the 8th day of August, A. D. 1874, the following certificate of evidence in said entitled cause was filed in said
29 clerk's office, and is in the words and figures following, to wit:

Certificate of evidence.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois. In equity.

WRIGHT C. HALL, COMPLAINANT,
vs.
LAUREN. A. NOYES, DEFENDANT.

Be it remembered that, on the 8th day of August, 1874, the day of the hearing of said cause, the following is a correct statement of the evidence and exhibits submitted to the court by the respective parties thereto:

On behalf of complainant was offered the depositions of Wright C. Hall, John Ives, and John C. Davis, together with the exhibits thereto attached, which depositions are now on file in said cause, which was all the evidence introduced by said complainant, and which are in the words and figures following, to wit:

In the United States circuit court for the northern district of Illinois. In chancery.

WRIGHT C. HALL
vs.
LAUREN. A. NOYES.

30 Testimony on the part of complainant in the above-entitled cause, taken by agreement of parties before Hosmer P. Holland, U. S. commissioner, at the city of Rockford, Illinois.

Present, J. Henry Truman, esq., solicitor for complainant; Henry C. Noyes, solicitor for defendant.

Testimony of Wright C. Hall.

WRIGHT C. HALL, being first duly sworn according to law, on his oath says:

My name is Wright C. Hall. My age is 43 years past. I reside in the town of Byron, county of Ogle, Illinois. I am complainant in this suit.

Int. 1. Were you acquainted with Hollis S. Hall? If yea, do you know where he now is?

Ans. I was acquainted with him. He is now dead.

Int. 2. Look at the writing, which I will show you, marked "Exhibit A," and state if the signature is in the handwriting of said Luther Hall, as there purported.

Ans. The signature is that of Luther Hall.

Int. 3. Were you acquainted with the handwriting of Luther Hall, and have you ever seen him write?

Ans. I was so acquainted, and have seen him write.

Int. 4. Is the other signature on said paper your own?

Ans. It is.

Int. 5. Were you present when said Luther Hall executed the writing Exhibit A?

Ans. I was.

Int. 6. What sums, if any, have you paid under and on account of the contract Ex. A?

Ans. I have paid something over $3,000. I can't state the exact
31 amount. Some of it was a book acc., which acc't has been lost, but it was something over $3,000.

Int. 7. Was any portion of this money paid prior to the first day of May, A. D. 1861. If yea, state how much.

Ans. There was. That I have an account of, aside from the book acc't, between $700 and $800, paid prior to May 1, '61.

Int. 8. Look again at Exhibit A, and state if you gave the notes as therein agreed.

Ans. I did.

Int. 9. Have all those notes been paid and cancelled; and, if yea, were they paid and cancelled on or before the dates provided therefor in said Exhibit A?

Ans. I could not say that they were paid and cancelled before that date, but they were all paid and cancelled.

Int. 10. Did you, during the life-time of Luther Hall, execute to him any mortgage under and in compliance with contract Exhibit A?

Ans. I did not.

Int. 11. Did you, subsequent to the execution of Exhibit A, have any agreement with said Luther Hall in respect to said mortgage?

Ans. I had not.

Int. 12. Is any portion of the land described in Exhibit A in your actual possession at the present time? If yea, state what portion thereof.

Ans. It is all in my possession at the present time.

32 Int. 13. State, if you know, the description of the lands in question in this suit.

Ans. The E. ½ of N. W. ¼ of section 18, township 25, range 11, east of 4th P. M.

Int. 14. When did you first take possession of the lands last described?

Ans. In March, A. D. 1860.

Int. 15. Have they been in your possession from thence to the present time? If yea, state what use you have made of them in the intervening period.

(Objected to.)

Ans. They have been in my possession and have been under cultivation; that is, the tillable land.

Int. 16. What improvements were there on the 80 acres described by you in 1860 & 1861, prior to the first day of May in the last year?

Ans. There was a log house, a log stable, and a fence on the west side and the south end. That, I believe, constituted the improvements.

Int. 17. Did any one occupy the buildings you have described during the period from March, 1860, to May, 1861; if yea, who, & for what purpose?

Ans. I occupied the house for a dwelling, the stable for my horses. I did not occupy the house until May, 1861. I occupied it all the time it was occupied during that time.

Int. 18. Were you living in the house, or using the stable, or cultivating the land spoken of on May 1st, 1861?

Ans. I was.

33 Int. 19. Describe, if you can, how the 80 acres spoken of by you lies in relation to the other lands described in Exhibit A.

Ans. It lies west and south, adjoining the land. There are 71 acres of the land lying east, and 8 and a fraction on the north.

Int. 20. State whether or not these lands, as described in Exhibit A, including the 80 acres in question, were enclosed by fences on and prior to May 1st, 1861.

Ans. They were.

Int. 21. How were they enclosed; in one or more parcels?

Ans. They were enclosed in two parcels.

Int. 22. Describe how the division was made.

Ans. There were no division-fence between the 80-acre lots. There was a part of section 7, and a part of this land in question, and the 11 acres lying east, that were enclosed as a hog-pasture; the balance was all in one body.

Int. 23. How and under what authority did you take possession of the lands that you have heretofore stated?

Ans. By permission of Luther Hall.

Int. 24. How did you get his permission?

Ans. The contract between us gave me permission.

Int. 25 Is the contract to which you refer Exhibit A?

Ans. Yes, sir.

Int. 26. Were you never served with any summons or subpœna issuing out of the United States court for the northern district of Illi-

34 nois, in a suit wherein Samuel L. Woodward was complainant, brought for the purpose of foreclosing a deed of trust or mortgage on the lands in question, or any part thereof?

Ans. I was not.

Int. 27. Did you, prior to June 10, 1861, know of the pendency of any such suit?

Ans. I could not swear positive as to that.

(Said Exhibit A and a quit-claim deed marked "Exhibit B" were here handed and introduced as evidence by complainant's counsel, and are hereto annexed.)

Cross-examination:

Int. 1. X. How much land, or how many acres of land, are there in section 7, referred to in Exhibit A?

Ans. We will call it seven acres.

Int. 2. X. How many acres of land were there conveyed to you as referred to in Exhibit A?

Ans. About 160 acres.

Int. 3. X. Was Exhibit A executed at the time it purports to be?

Ans. No, sir; it was not.

Int. 4. X. When was it signed by you and Luther Hall?

Ans. It was signed in the spring of 1860.

Int. 5. X. What month and day of the month was it signed in the spring of 1860?

Ans. It was signed in Feb'y, 1860; it was between Feb'y 8 and March 18th, 1860.

Int. 6. X. At the time Exhibit A was executed, did you pay Luther Hall any money?

Ans. I don't think I did.

Int. 7. X. When did you pay the first money for the land specified in Exhibit A?

35 Ans. I paid, through my brother, at the date of the agreement, $200 to my father.

Int. 8. X. Do you know of your own knowledge that the $200 which you paid, as you claim, to your father through your brother, was ever paid to your father?

Ans. I did not see it paid.

Int. 9. X. When did you make the next payment, as referred to in Exhibit A?

Ans. The date of the next payment was in the month of Oct., 1860.

Int. 10. X. How much was paid at that time?

Ans. I paid $150 in gold.

Int. 11. X. Who did you pay it to?

Ans. I paid it to my father personally.

Int. 12. X. When was the next payment made?

Ans. The next payment was made in the forepart of Jan'y, 1861.

Int. 13. X. How much was paid at that time?

Ans. There was between $310 and $325 paid at that time.

Int. 14. X. Who was this paid to?

Ans. It was paid to John Hogan.

Int. 15. X. How did you owe John Hogan at this time?

Ans. Not anything; it was paid to John Hogan for my father.

Int. 16. X. Do you know of your own knowledge whether said Hogan ever paid this money to your father?

Ans. I do not.

Int. 17. X. Was this paid in money?

Ans. It was.

36 Int. 18. X. When was the next payment made, as referred to in Exhibit A?

Ans. It was in the spring of 1861. I paid my father $50.

Int. 19. X. To whom did you pay that?

Ans. I paid it to my father, in money.

Int. 20. X. When was the next payment made, as referred to in Exhibit A, or were there any other payments made?

Ans. Yes, there were other payments made. I paid during the year 1860 several small sums of $10 to $15 on sundrys. I paid $5.00 to M'r Russell for the use of a stallion which I put to one of his mares. I was allowed $5.00 for the services of my stallion.

Int. 21. X. When was the next payment made, as referred to in Exhibit A?

Ans. It was in 1864 or 1865. I think $1,371.

Int. 22. X. This payment you made in 1864–'5 was made to redeem other land mentioned in Exhibit A other than the lands in controversy in this suit, was it not?

Ans. One 80 of this land redeemed by me is included in this Exhibit A; the balance of it was land I redeemed for my father.

Int. 23. X. Was any of the money paid in Chicago, as above stated, paid to redeem the 80 acres in controversy?

Ans. It was not.

Int. 24. X. At the time you paid this $1,300 were you the owner of the land that you paid to redeem it from ?

Ans. It was subsequent to the making of the deed to me.

37 Int. 25. X. What was this money paid for in Chicago?

Ans. It was from a sale under an execution against my father.

Int. 26. X. Was the judgment from which the execution was obtained rendered previous to the making of the deed marked "Exhibit B?"

(Objected to.)

Ans. It was.

Int. 27. X. Is Exhibit B a deed of the property that you paid the money to redeem from the said judgment, except the 80 acres in controversy?

Ans. Yes; it is.

Int. 28. X. What was the date of the next judgment?

Ans. It was in 1864 or 1865. John Russell held a judgment against my father for between 9 & 10 hundred dollars. I assumed the payment of that, and gave my notes, and had the judgment cancelled.

Int. 29. X. Was this judgment you say you paid in 1864 or 1865 rendered previous to the execution of the deed Exhibit B?

Ans. Yes; I think it was.

Int. 30. X. Was the payment of that judgment made to redeem other land than that in controversy, which you owned and acquired through the deed Exhibit B?

(Objected to.)

Ans. It was.

Int. 31. X. Did you take any receipts from your father on account of money paid him on this contract?

Ans. No; I never did.

38 Int. 32. X. Were not the payments by you, as above stated, made to pay for other land than that in controversy?

Ans. Part of them were.

Int. 33. X. What proportion of these payments made was made for other lands not in controversy?

Ans. I cannot tell.

Int. 34. X. Was it not all paid on other lands?

Ans. It was not.

Int. 35. X. Are the above all the payments made as referred in Exhibit A?

Ans. They are, with the exception of small items—sundrys—of which I have no record.

Int. 36. X. Did you know of the existence of the mortgage given by your father mentioned in your bill of complaint?

Ans. I did.

Int. 37. X. Did you know when the notes became due that were secured by said mortgage?

Ans. I did not.

Int. 28. X. Were you present when the United States marshal served the summons on Luther Hall and Olive Hall, issued in the suit above mentioned, to foreclose the aforesaid mortgage?

Ans. I was not.

Int. 29. X. Where were you at the time?

Ans. My father lived at Byron and I lived on this farm. We did not live on the same premises.

Int. 30. X. Did you not talk with your father and other neighbors of yours about the foreclosure suit above mentioned at the time said foreclosure suit was pending?

39 Ans. Well, I think I did. I don't know whether it was before the judgment was rendered or after it.

Int. 31. X. It was about the time, you think?

Ans. I think it was.

Int. 32. X. Did you not at the time said foreclosure suit was pending consult an attorney at the town of Oregon to obtain advice as to your rights to the property sold under said mortgage?

Ans. I don't know that I did prior to the rendering of the judgment.

Int. 33. X. Do you swear that you did not?

Ans. No, I won't swear that I did not, for I did consult a lawyer; but I don't know whether it was before or after the decree of foreclosure was rendered or not.

Int. 34. X. If after the decree, now how long was it?

Ans. I think it was the day the premises were sold under the decree.

Int. 35. X. Do you say that you intended to be at the said sale—that you heard of it the day previous to said sale.

Ans. Yes, sir.

Int. 36. X. Did you ever tender to the officer making said sale the amount for which the land in controversy was sold for under said decree of foreclosure?

Ans. I did not.

Int. 37. X. At the time said foreclosure suit was pending in Chicago, did you not write to an attorney in Chicago to request him to file an answer in said foreclosure suit or to obtain advice as to the bene-

40 fit of filing an answer in said case?

Ans. I did not.

Int. 38. X. Did you not know of your father's writing for the same purpose?

Ans. I did not.

Int. 39. X. Did you ever tender to Daniel W. Pickering at said sale, or his agents or attorneys, the amount of money for which said premises were sold for at said sale?

Ans. I told Miller, his attorney, that I wanted to redeem, and he told me that the decree was absolute and I could not redeem.

Int. 40. X. Did you tender him any money?

Ans. I did not.

Int. 41. X. How long was it after said sale that you talked with said attorney, Miller, about this matter?

Ans. I believe it was at the time of the sale at Oregon. I got there just after the sale was made, and he was there, and I talked to him about the matter.

Int. 42. X. Was this M'r Miller attorney for the complainant in this suit?

Ans. He claimed to be.

Int. 43. X. How long was it after said sale that you talked with said Miller in Chicago about redeeming the land in controversy?

Ans. I had no such conversation with him at his office, but was at his office some time after.

Int. 44. X. Did your father tell you that they were served with summons in said suit within two or three days after they had been served?

41 Ans. I have no recollection of his saying anything about it. The first intimation I had of it was by reading a letter from M'r Miller to my father.

Int. 45. X. Was that about the time said suit was commenced?

Ans. I don't know how long after the suit was commenced. It was some time between the time the suit was commenced and the sale—informing him that unless the matter was settled the land would be sold.

Int. 46. X. Did you see the letter?

Ans. I did.

Int. 47. X. In 1860 you say that you were in possession of the land in controversy; where did you reside at that time?

Ans. I resided on the premises in question, in the log house above referred to.

Int. 48. X. You were residing there in 1860 with your family, and how long did you reside there?

Ans. I resided there until the fall of the same year, and moved from there to a house that I built on the premises embodied in the first contract. It was not on the 80 acres in controversy.

Int. 49. X. Have you resided in the house to which you moved with your family in the fall of 1860 ever since said fall of 1860?

Ans. I have, with the exception of from Oct., 1864, to April, 1865, which time we lived in Beloit, Wisconsin.

42 Int. 50. X. Who was tilling the land or the premises in question in 1861?

Ans. I did.

Int. 51. X. Was any one connected with you in tilling the farm?

Ans. I think not.

Int. 52. X. Are you sure your father was not in partnership with you that year?

Ans. Yes, sir.

Int. 53. X. Where did your father reside in 1861?

Ans. In the village of Byron, which is about 3½ miles from the land in question.

Int. 54. X. Did not your father, in the springof1861, reside for a time in your house?

Ans. He did not.

Int. 55. X. What are the valuable improvements that you have made on the premises in controversy, as set forth in your bill in this case?

Ans. I have built about 100 rods of fence; have put between 2 & 3 hundred loads of manure on it; have grubbed stumps out of the plow' land, and have clovered about 16 acres for the improvement of the land, and have grubbed and plowed some of the waste land, and have built a privy and smoke-house on it.

Int. 56. X. What did the privy cost?

Ans. The privy cost about $15.

Int. 57. X. What did the smoke-house cost?

Ans. About $5.00.

Int. 58. X. Are those all the buildings you ever built on said premises?

Ans. They are.

43 Int. 59. X. In breaking the land, as above stated, was it not done in order that you might not raise a greater crop than on the other lands?

Ans. I have not raised a crop off it yet. It was broken up last year.

Int. 60. X. In building the fences above mentioned, did you not use the rails to build said fences with that were taken from said premises?

Ans. The fence which I built was all new posts, and three boards and two wires, and were all bought by myself, and a four-wire fence. In the four-wire fence I used the rails that were on the premises for posts and furnished the wire myself.

Int. 61. X. How many stumps did you grub on the premises?

Ans. I had two men employed for two weeks grubbing.

Int. 62. X. What did you pay the men for grubbing for the two weeks, or what was it worth per day?

Ans. One man I paid at the rate of $21 per month, and the other at the rate of $17.50 per month.

Int. 63. X. During the time of grubbing, as above stated, did not the two men do other work with you on or about the farm?

Ans. They did chores nights and mornings.

Int. 64. X. Were the improvements mentioned in your above answers all the improvements made by you on said premises?

Ans. I believe that is all.

44 Int. 65. X. How was this 80 acres fenced in the spring of 1861?

Ans. The 80 was fenced on the west side and on the south side.

Int. 66. X. Did you ever, previous to the sale under the said decree, tender to the United States marshal for the northern district of Ills., or to the clerk of the circuit court for said district, or to Samuel L. Woodard, or to Lauren. A. Noyes, or to the master in chancery of said court, the amount of money necessary to free the premises in question from the lien created by the mortgage above mentioned?

Ans. I did not.

Direct examination resumed:

Int. 1. Was the new house, which you say you built on the lands described in Exhibit A, within the same fence enclosure surrounding the parcel of land in question in this suit?

(Question objected to.)

Ans. It was.

Int. 2. Will you explain briefly the circumstances which led to the post-dating of the contract marked "Exhibit A," and what consideration, if any, did you pay to the holder of the original contract?

(Objected to.)

Ans. In 1859 my brother Hollis bought these premises from my father. After occupying them until the spring of 1860, he wanted that I

45 should take the bargain off his hands. I gave my father my notes in the place of my brother's notes, bearing the same date with the notes and for the same amounts, and took the new contract in the place of the contract my brother had given and bearing the same date, and paid him over $300 in cash.

Int. 3. In respect to the several payments mentioned by you as on account of claims against your father and for redemptions of land, at whose instance or request were such payments made?

Ans. At my father's.

Int. 4. Were such payments made by his agreement to apply on your indebtedness under Exhibit A?

(Objected to.)

Ans. Yes, that was the agreement.

Int. 5. Were any lands redeemed from judgments by you saving those mentioned in Exhibits A & B?

Ans. None.

WRIGHT C. HALL.

Subscribed & sworn to before me this 8th day of May, A. D. 1873.
[SEAL.] HOSMER P. HOLLAND,
U. S. Commissioner.

46 *Testimony of John Ives.*

JOHN IVES, first being duly sworn according to law, on his oath says: My name is John Ives; my age is 43 years; I reside in the town of Byron, Ogle County; I am acquainted with the parties to this suit.

Int. 1. Are you acquainted with the boundaries of the land in question in this suit?

Ans. I am.

Int. 2. Do you know whether said land was tilled or occupied in the years 1860 & 1861 to about May 1st, 1861? If yea, by whom was it tilled or occupied?

Ans. I know it was tilled by Wright Hall during that time all the time.

Int. 3. Who, if any one, lived on this land during the years 1860 & 1861?

Ans. M'r Wright Hall lived on it during the summer of 1860.

Int. 4. Was this 80 acres in question within the same enclosures and used with the farm on which M'r Wright C. Hall resided about May 1, 1861?

Ans. It was.

Int. 5. Do you know when the complainant took possession of the land in question, and to what date it was occupied by him continuously?

(Objected to.)

Ans. He moved on this place in the spring of 1860, and has lived there continuously with the exception of one winter, while he lived in Beloit.

Cross examination:

47 Int. 1. X. Do you mean to state that said Wright C. Hall moved on this 80-acre tract, and lived there continuously up to this date?

Ans. I mean to state that he has tilled the land in question since 1860, but has not had his residence on the land since the fall of 1860.

Int. 2. X. In the year 1861, do you know whether said Wright C. Hall tilled the land alone, or was his father in partnership with him?

Ans. I lived in the house with him and heard nothing of it. I think he worked the land alone.

Int. 3. X. Did you have any conversation with Wright C. Hall at the time of the pendency of the foreclosure suit mentioned in the bill about his rights in said premises?

(Objected to.)

Ans. I presume I did, but do not remember anything in particular that was said. I have heard him speak of it during the pendence of this suit.

Redirect examination:

Int. 1. Where did M'r Hall move when he left the house situated on the 80 acres in question, and where has he since resided?

(Objected to.)

Ans. He moved into the new house on land adjoining.

JOHN IVES.

Subscribed & sworn to before me this 8th day of May, A. D. 1873.
[SEAL.] HOSMER P. HOLLAND,
U. S. Commissioner.

48 *Testimony of John C. Davis.*

JOHN C. DAVIS, first being duly sworn according to law, on his oath says:

My name is John C. Davis. My age is 48 years. I reside in the town of Byron, in Ogle Co., Illinois. I am acquainted with the complainant, and have seen M'r Noyes, the defendant.

Int. 1. Do you know the location and boundaries of the land in question in this suit?

Ans. I do.

Int. 2. Do you know whether or no they were occupied and tilled during the years 1860 & 1861? If yes, state by whom they were so occupied or used.

Ans. They were used and occupied by Wright C. Hall.

Int. 3. State, if you know, how long continuously the land in question was tilled or otherwise used by the complainant Hall subsequent to the spring of 1860.

Ans. He has been in continuous possession of the land in question from the spring of 1860 to the present time, with the exception of one winter, when he went to Beloit, and then he hired a man to take care of it.

Cross-examination:

Int. 1. X. Where have you resided since 1860?

Ans. In the township of Byron, Ogle Co., Ill's. I have lived in one place all the time.

Int. 2. X. How far have you resided from the land in question since 1860?

Ans. The land in question is about one mile and a quarter from where I live.

49 JOHN C. DAVIS.

Subscribed and sworn to before me this 8th day of May, A. D. 1873.

[SEAL.] HOSMER P. HOLLAND,
U. S. Commissioner.

EXHIBIT A.

Article of agreement made this fourth day of June, A. D. 1859, between Luther Hall, of Byron, Ogle County, State of Illinois, of the first part, and Wright C. Hall, of the same place, of the second part, witnesseth:

That if the party of the second part shall make the payments on his part to be made, the said party of the first part agrees to convey, by good and sufficient deed, to the party of the second part, or his legal representatives, the following tract or parcels of land, viz: So much of section seven as lies south of the road between the stone church and the west line of L. L. Case's farm, and the west half of the N. E. ¼ of sec. 18; and the E. ½ of N. W. ¼ of said eighteen, T. 25, R. 11, E. 4 p. m., except nine acres deeded to L. L. Case, being one hundred & sixty acres, more or less.

The said party of the second part agrees to pay three thousand, in manner following, to wit: Oct. 30th, 1859, $200. Interest on $3,000 at 6 p'r cent. for one year. Oct. 30th, 1860, $200. Oct. 30, 1861,
50 $500. Oct. 30, 1862, $500. Oct. 30, 1863, $500. Oct. 30, 1863, $500. Oct. 30, 1864, $500. Oct. 30, '65, $600. The deed shall be made and delivered on demand after the three first payments ($900) are

made, and a mortgage received for the remaining payment of $2,100, and the party of the second part is to pay all taxes on said land. It is mutually agreed that all covenants herein contained shall be equally binding on the heirs and assigns of both parties.

In witness *of* whereof the parties have hereunto set their hands & seals the date above written.

LUTHER HALL.
WRIGHT C. HALL.

Signed, sealed, and delivered in presents of—
HOLLIS S. HALL.

EXHIBIT B.

This indenture, made this tenth day of February, in the year of our Lord one thousand eight hundred and sixty-four, between Luther Hall & Olive Hall, his wife, of the town of Byron, county of Ogle, and State of Illinois, of the first part, and Wright C. Hall, of the town of Byron, county of Ogle, and State of Illinois, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five hundred dollars, to us in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-claimed, and
51 by these presents do grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, and to his heirs and assigns forever, all the right, title, and interest of the said party of the first part in law or equity, either in possession or expectancy, in and to the following-described lands and premises, situate in the county of Ogle and State of Illinois, namely: The west half of the southeast quarter of the southeast quarter of the southwest quarter of section seven, and the west half of the northeast quarter and the east half of the northwest quarter of section eighteen, town twenty-five, range eleven, east of the fourth principle meridian, except ten acres deeded to L. L. Case, and one acre deeded for church purposes, containing two hundred and seventy-one & $\frac{28}{100}$ acres, be the same more or less, W. ½ S. E. ¼ S. E. ¼ S. W. ¼ sec. 7, & W. ½ N. E. ¼ & E. ½ N. W. ¼ sec. 18, T. 25, R. 11, E. 4 P. M.

To have and to hold the same, with all the privileges and appurtenances, of whatsoever name or nature, thereunto belonging, unto the said party of the second part, and to his heirs and assigns, forever.

And the said Luther & Olive Hall, party of the first part, hereby expressly waive and release any and all right, claim, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution," passed
52 by the general assembly of the State of Illinois A. D. 1851, and approved February 11th, A. D. 1851, and an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by said assembly A. D. 1857, and approved February 17th, A. D. 1857.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

LUTHER HALL. [SEAL.]
OLIVE HALL. [SEAL.]

Executed in presence of—
HOLLIS S. HALL.
LUCIUS READ.

[Int. rev. 50-cent. stamp, canceled. L. & O. H., Feb. 10, '64; for'n exchange.]

STATE OF ILLINOIS,
Ogle County:

I, Lucius Read, a notary public in and for said county, in the State aforesaid, do hereby certify that Luther & Olive Hall are personally known to me as the same persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the use and purpose therein set forth, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, of this State; and the said Olive Hall, personally known to me to be the wife of the said Luther Hall, having been by me examined separate and apart and out of the hearing of her husband,
53 and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all right, title, and interest in and to the lands and tenements therein mentioned; and her rights under the homestead exemption laws, so called, having been by me fully explained and made known to her, acknowledged that she expressly waived and released all right, claim, benefit and privilege, advantage and exemption, under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act passed by the general assembly of the State of Illinois A. D. 1851, and approved February 11th, A. D. 1851, and an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by said general assembly A. D. 1657, and approved February 17th, A. D. 1857, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this tenth day of February, A. D. 1864.

[SEAL.]

LUCIUS REED,
Notary Public

STATE OF ILLINOIS,
Ogle County, ss:

RECORDER'S OFFICE.

54 Filed for record on the 19th day of February, A. D. 1864, at 4 o'clock p. m.

Recorded in book 30 of deeds, page 157, and examined.

F. G. PETRIE.

(Endorsed:) Filed & opened to learn nature of contents May 21st, '73. W'm H. Bradley, cl'k.

This indenture, made this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, between Luther Hall, of Byron, & his wife, of the county of Ogle, and State of Illinois, party of the first part, and Lumen A. Noyes, of the county of Winnebago, in the State aforesaid, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand & seventy-five dollars, paid by the said party of the second part, (the receipt of which is hereby acknowledged,) do by these presents grant, bargain, and sell unto the said party of the second part, his heirs and assigns, the following-described tract or parcel of land, situated in said county of Ogle, to wit: The east half of the north-

west quarter of section No. eighteen, (18,) town. twenty-five,
55 range eleven east, containing (80) acres, more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said premises as above described, with the appurtenances, unto the said part of the second part, his heirs and assigns, forever. And the said party of the first part, for himself and his heirs, executors, and administrators, does hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee-simple, and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrances; and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever, they will forever warrant and defend:

Provided always, and these presents are upon this express condition, that if the said Luther Hall, party of the first part, his heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said party of the second part, his executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time
56 and in the manner specified in two promissory notes, one dated with these presents for five hundred & forty dollars, pay'e in one year, the other for $535, in 2 years from date, according to the tenor and effect and true intent and meaning thereof, that then and in that case these presents and everything herein expressed shall be absolutely null and void.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

LUTHER HALL. [SEAL.]
OLIVE HALL. [SEAL.]

Signed, sealed, and delivered in presence of—
HENRY WHEELOCK.

STATE OF ILLINOIS,
Ogle County; ss:

On this 26th day of April, 1858, personally appeared before me, Henry Wheelock, in and for said county, Luther Hall, to me personally known *to me* to be the person whose name is subscribed to the above deed having executed the same, and acknowledged that he had freely executed the same for the uses and purposes therein expressed; and Olive Hall, wife of the said Luther Hall, to me personally known to be the person whose name is subscribed to the same deed, also appeared before me, and was by me made acquainted with the contents of the same,
57 and examined separate and apart from her said husband whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion of her said husband, and acknowledged that she executed the same and relinquished her dower in the lands and tenements therein mentioned voluntarily and freely and without the compulsion of her said husband.

Given under my hand and seal the day and year aforesaid.

HENRY WHEELOCK, *J. P.* [SEAL.]

STATE OF ILLINOIS,
Ogle County, ss:

I, Frederick G. Petrie, clerk of the circuit court and ex-officio recorder in and for said county, do hereby certify that the above and foregoing

is a true, full, and perfect copy of an instrument of writing of record in the recorder's office in said county, and that the same was filed on the 17th day of May, A. D. 1858, at the hour of 8 a. m., and recorded in book Q of deeds, on page 585, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 8th day of October, 1872.

[SEAL.] F. G. PETRIE,
Clerk and ex-officio Recorder.

58 In the circuit court of the United States, northern district Illinois, in chancery.

WRIGHT C. HALL
v.
LAUREN A. NOYES.

It is stipulated by and between the parties in said suit, by their solicitors, that the testimony of the complainant and of John Ives, a witness for the complainant, may be taken at Rockford, Winnebago County, in said district, by Norman C. Warner, or any justice of the peace or notary public residing in said county, upon the interrogatories hereto attached, to be propounded to said witnesses, and that said testimony, when taken and returned certified by said Warner or other person taking it as special commissioner, may be read in evidence on the hearing of said cause without objection for want of formal commission; and, further, that the said defendant need not appear nor file cross-interrogatories, but shall have the right to summon said witnesses to appear at any time before the commissioner, notary, or justice, who shall take the said depositions, to answer such cross-questions or interrogatories as he may desire to put upon reading the direct evidence. And, further, that the objection to these depositions and to each of the interrogatories hereto attached is reserved; that the same is not admissible nor
59 competent as a rebutting case, and could only be inquired into by the complainant in his direct case.

SIDNEY THOMAS,
Sol'r for Def't.

Deposition of Wright C. Hall.

Deposition of WRIGHT C. HALL, complainant, taken before Norman C. Warner, special commissioner, at Rockford, county of Winnebago, and State of Illinois, on the sixteenth day of December, A. D. 1873.

1. Do you know who has paid the taxes on said parcel of land in the bill described since the year 1860? If yea, who?

ANS. I paid the tax on it in 1860, and I think I paid the taxes on it for the years 1861, 1862, and 1863. In 1864 or 1865 I believe the land was sold for taxes, and I don't think I paid the taxes that year.

2. Do you know who has paid the taxes for each year since 1866? If yea, who?

ANS. I paid the tax on that land for 1867. E. F. Dutcher, of Oregon, Illinois, notified me that the land had been sold for taxes, and he had the certificates of sale, and I believe he paid the taxes on the land from the time it was sold until I paid the taxes again in 1867. Since the year 1867 I have paid the taxes on the land.

3. If, in answer to either of the foregoing interrogatories, you say that

you have paid any taxes on said land during said periods aforesaid,
60 state for what years you paid taxes, produce any tax-receipts you may have, state by whom the same were signed, & when and under what circumstances they were obtained.

Ans. I now produce the tax-recept given to me in 1860, and was signed by M. Coolbaugh, who was then collector of town of Byron, Illinois; I also produce the tax-receipt given to me in January, 1868, for the tax of 1867, and signed by M. Coolbaugh, same collector; I also produce tax-receipt given to me in 1869 for tax of 1868, signed by M. Coolbaugh, same collector; I also produce tax-receipt given to me in 1870 for tax of 1869, and signed by M. Coolbaugh, same collector; I also produce tax-receipt given to me in 1871 for tax of 1870, signed by M. Coolbaugh, same collector; I also produce the tax-receipt given to me in 1872, and for tax of 1871, signed by M. Coolbaugh, same collector; I also produce tax-receipt given to me in 1873 for tax of 1872, signed by M. Coolbaugh, same collector. These tax-receipts refer to the land in controversy in suit between me and Lauren A. Noyes, and are the only receipts I am able to produce; they were each given to me about the time they purport to bear date by said Coolbaugh. I also produce a tax-receipt unsigned, which purports to be for the taxes on said land.

It has been in my possession since the year 1864 until the pres-
61 ent time. I think I paid the taxes which appear on said receipt for the year 1863, but I am unable to state in whose handwriting the same is made, or from whom I received the same. All of the tax-receipts above specified were received by me at Byron, Ogle County, Illinois.

4. It is stated by the defendant, Lauren A. Noyes, and by Adam S. Noyes, his father, and a witness for the defendant, in the testimony given by them in this case, that in the year 1865, '6, or '7, or thereabouts, you leased said premises from Lauren A. Noyes. State if you made any agreement for a lease of the premises or paid any rent therefor; and, if yea, on what terms. State fully also what circumstances led to the agreement to pay or payment of rent.

Ans. In the year 1865, I think, S. Noyes came to my place, at Byron, Illinois. I gave him my note for fifty dollars for the use of this land in question for the year 1865. S. Noyes brought suit upon said note before Marcus B. Jerould, a justice of the peace at Byron, Illinois, and I resisted payment of the note on the ground that it was given for the use of land belonging to me. No recovery was obtained by said Noyes in

said suit; 1865 was the only year I have ever made any arrange-
62 ment or agreement with Noyes, or any other person, for the use of the lands in controversy, and I did so in 1865, believing I might, on non-payment of the note I have before mentioned, raise the question of title and my right to the land in question in the courts. I have never paid any rent or given any lease or writing concerning the use of the lands in question, except the note I have before mentioned.

5. It is testified by the persons named in the last interrogatory that you offered to purchase said premises of said Lauren A. Noyes after the reconveyance to him by Pickering; state if you did so offer to purchase the premises; and, if yea, under what circumstances you made the offer, and what terms you wanted to make. If nay, state what you did do to possess or quit the claim of said defendant.

Ans. I think Lucius Noyes came to my place in 1866, or thereabouts. I told him I had been troubled so much about the place that I would give about sixteen hundred dollars to clear the thing up, and so I would not be molested any more. I distinctly told said Noyes that I thought

the premises belonged to me, that I had bought them and paid for them; my offer was not accepted. I was then in possession of the premises.

6. Have you ever offered to redeem said premises from the claim of said Noyes; if yea, when and upon what terms? State fully.

63 Ans. I offered to redeem from one Sam'l L. Woodard, in 1864. I do not think I made any terms to Woodard, but I wrote to him asking him if he would allow me to redeem, and upon what terms. The reply I received from Woodard I now produce, and which has been in my possession from about the time of its date, Oct. 27th, 1864, until the present time. The letter dated the 27th of October, 1864, and signed by Samuel L. Woodard, is the only one I ever received from him. I may have written to Lauren A. Noyes in regard to a redemption of the premises in question, but I received no reply. I have no recollection of making any terms to Noyes.

7. Do you know what interest, if any, Samuel Woodward had, or claimed to have, in said premises, after their sale under the decree of the United States court to Daniel Pickering? State what you know about it.

Ans. I have no knowledge of any claim to the lands in question by Samuel Woodard, other than what I derived from his letter before mentioned, dated October 27th, 1864, and received by me. James Miller, the attorney of Woodward or Noyes, in the suit for foreclosure in the United States court at Chicago, told me that Noyes had assigned the claim to Woodard.

8. Do you know what relationship existed (if any) between Woodward, Pickering, and Lauren A. Noyes in respect to this property? State what you know about it.

64 Ans. I do not know what relationship existed between Noyes, Woodard, and Pickering concerning this property. I never saw or received any letters from Pickering.

9. State any other matters within your recollection advantageous to your cause as complainant in this suit and pertinent to its issues.

Ans. Noyes claimed to own the lands in question as far back as 1865, and having already received a letter from Woodward, dated Oct. 27th, 1864, stating that he claimed said lands, and wanted me to pay him rent, I was at a loss to know who was the true claimant of the lands. I never made any arrangements or agreement whatever with James Miller as attorney of Woodard, or any other person, for the renting of the lands in question.

WRIGHT B. HALL.

Exhibit referred to in above deposition.

STATE OF ILLINOIS,
Ogle County, ss:

OFFICE OF THE COLLECTOR OF THE TOWN OF BYRON,
Jan. 16th, 1872.

No. .

Received of Wright C. Hall sixty-three and $\frac{61}{100}$ dollars in full for the following State, county, town, and special taxes on the following-described real estate and personal property, due for the year 1871, to wit:

65

Description.	S.	T.	R.	No. of acres	State tax.	County tax	Town tax.	Dis. sch. tax	Dog tax.	Total tax.
				Acres. 100th	*Dol'rs. C's.*	*Dol'rs. C'ts.*	*Dol'rs. C'ts.*	*Dol'rs. C'ts.*	*Dol'rs. C'ts.*	*Dol'rs. C'ts.*
N. p't SW. ¼ SE. ¼.	7	25	11	38	2 21	1 38	21	2 76	.....	6 56
SE. ¼ SW. ¼..	7	25	11	39	3 86	2 42	36	4 83	.....	11 48
P't W. ½ NE. ¼.	18	25	11	71	5 09	3 18	48	6 36	.....	15 11
E. ½ NW. ¼ ...	18	25	11	80. 25	5 84	3 63	54	7 25	.....	17 26
Personal propt. tax.	...	...	...	.....	5 88	2 01	30	4 01	1 00	13 20
										$63 61

M. COOLBAUGH,
Collector of said Town.

Deposition of John Ives.

Deposition of JOHN IVES, taken before Norman C. Warner, special commissioner, at Rockford, county of Winnebago and State of Illinois, on the sixteenth day of December, A. D. 1873.

1. What is your name, age, occupation, and place of residence?

Ans. My name is John Ives; age, 44 years; occupation, farmer; and place of residence, Byron, Illinois.

2. Are you acquainted with both the parties to this suit?

Ans. I am acquainted with both Wright C. Hall and Lauren A. Noyes.

3. Do you remember having a conversation with Lauren A. Noyes at Boston, in the month of February, 1861, in respect to some of the matters in question in this suit? If yea, state fully the conversation as it occurred, and particularly what was said by the defendant Noyes.

Ans. I cannot remember the details of conversation. I was 66 at his (Noyes') stable in city of Boston about the month of January, 1861. Will not state positively whether it was January or February, 1861. I there met Lauren A. Noyes, at the place above mentioned. Noyes asked me what Wright Hall was doing. I told him (Noyes) that Wright had built a new house and was working the farm. He asked me what Wright intended to do about this claim. I told him I couldn't give him any answer. My impression is that in this conversation Noyes remarked that Wright and his father must settle the matter up immediately, or they would have to foreclose the mortgage.

4. State any other matters within your knowledge of advantage to the complain't, and pertinent to the question in this suit.

Ans. I know of nothing further.

JOHN IVES.

Exhibit A, referred to.

COLLECTOR'S RECEIPT.

STATE OF ILLINOIS,
Ogle County, ss:

Received, Byron, Dec. 15th, A. D. 1860, of M. Hall, esq., twenty-four dollars and fifty-two cents, being the amount of his State, county, town, road, school, and district-school taxes due said county and State on his real and personal property for the year 1860.

Part of section.	Sec.	T'n.	Ran.	Acres.	Town lots.	State.	C'nty.	Town.	Road.	D. R.	D. S. T.	Total tax.
P't W. ½ N. E. ¼	18	25	11	71	249	$1 67	1 00	25	92	....	5 98	9 82
E. ½ N. W. ¼	18	25	11	80. 28	231	1 88	1 13	28	1 04	83	5 62	10 78
Personal property.....	....	....	....	.....	231	1 70	1 02	26	94	....	....	3 92
						5 25	3 15	79	2 90	83	11 60	$24 52

M. COOLBAUGH,
Town Collector.

67 STATE OF ILLINOIS,
Ogle County, ss:

COLLECTOR'S OFFICE OF THE TOWN OF BYRON, ILL.,
Jan. the 6th, 1868.

Received of Wright C. Hall the sum of sixty-eight and $\frac{78}{100}$ dollars, the same being the full amount of taxes due for A. D. 1867 on the following real estate and personal property, to wit:

	S.	T.	R.	Acres.	State tax.	County tax.	Town tax.	District-school tax.	County war tax.	Road and bridge tax.	Dog tax.	Total tax.
N. p't E. ¼ S. W. ¼	7	25	11	39	1 20	83	89	1 06	1 59	44	.....	5 11
S. p't S. E. ¼ S. W. ¼	7	25	11	7	2 05	80	49	1 81	2 70	74	.....	8 09
N. p't S. W. ¼ S. E. ¼	7	25	11	38	1 29	57	31	1 14	1 71	47	.....	5 49
P't W. ¼ N. E. ¼	18	25	11	71	2 23	1 16	63	2 33	3 49	98	.....	11 28
E. ¼ N. W. ¼	18	25	11	80. 28	2 23	1 25	68	2 50	3 75	1 63	.....	12 04
Personal val., $330	....	....	....	.....	6 00	2 62	1 43	5 22	7 84	2 15	1 00	26 26
												$68 79

M. COOLBAUGH,
Collector of said Town.

STATE OF ILLINOIS,
Ogle County, ss:

COLLECTOR'S OFFICE OF THE TOWN OF BYRON, OGLE CO., ILL.,
Jan. the 4th, 1869.

Received of Wright C. Hall the sum of seventy-four & $\frac{45}{100}$ dollars, the same being the full amount of taxes due for A. D. 1868 on the following real estate and personal property, to wit:

	S.	T.	R.	Acres.	State tax.	County tax.	Town tax.	District-school tax.	County war tax.	Road and B. tax.	Dog tax.	Total tax.
S. E. ¼ S. W. ¼	7	25	11	39	2 99	1 63	52	4 07	4 89	52	.....	14 62
N. p't S. W. ¼ S. E. ¼	7	25	11	38	1 36	74	24	1 85	2 22	24	.....	6 85
P't W. ¼ N. E. ¼	18	25	11	71	2 93	1 59	50	3 95	4 77	50	.....	14 27
E. ¼ N. W. ¼	18	25	11	80. 28	3 13	1 71	55	4 26	5 13	55	.....	15 33
Personal propt. tax	....	...	..	.....	3 60	2 07	66	5 18	6 21	66	5 00	23 58
												$74 45

M. COOLBAUGH,
Collector of said Town.

68 STATE OF ILLINOIS,
Ogle County, ss:

COLLECTOR'S OFFICE OF THE TOWN OF BYRON, ILL.,
Feb. 14th, 1870.

Received of Wright C. Hall the sum of thirty-five & $\frac{42}{100}$ dollars, the same being the full amount of taxes due for A. D. 1869, on the following real estate and personal property, to wit:

	S.	T.	R.	Acres.	State tax.	County tax.	Town. tax.	District school tax.	District r'd tax.	R. B. county war tax.	C. W. and road B. tax.	T. B. tax.	Tax.	Total tax.
E. ¼ N. W. ¼	18	25	11	80. 28	6 78	2 20	83	6 60		1 52	6 60	10 69		35 12

M. COOLBAUGH,
Collector of said town.

STATE OF ILLINOIS,
Ogle County, ss:

OFFICE OF THE COLLECTOR OF THE TOWN. OF BYRON,
January the 3d, 1871.

Received of Wright C. Hall seventy-three and $\frac{10}{100}$ dollars, in full for the following State, county, town., & special taxes on the following-described real estate & personal property, due for the year 1870, to wit:

Description.	S.	T.	R.	No. of acres.	State tax.	County tax.	Town. tax.	Dis. sch. tax.	Dog tax.	Total tax.
				Acres.100ths	*Dolrs. cts.*	*Dolrs. cts.*	*Dolrs. cts.*	*Dolrs. cts.*	*Dolrs. cts.*	
S. E. ¼ S. W. ¼	7	25	11	39	2 85	1 72	3 59	4 31	.....	12 47
N. p't S. W. ¼ S. E. ¼	7	25	11	38	1 65	1 00	2 08	2 50	.....	7 23
P't W. ¼ N. E. ¼	18	25	11	71	4 09	2 44	5 06	6 09	.....	17 61
E. ½ N. W. ¼	18	25	11	80. 28	4 32	2 62	5 45	6 55	.....	18 94
Personal propt. tax	....	....	....	.....	4 00	2 12	4 42	5 31	1 00	16 85
										73 10
Paid by Rosier										1 00
										72 10

M. COOLBAUGH,
Collector of said town.

69 STATE OF ILLINOIS,
Ogle County, ss:

OFFICE OF THE COLLECTOR OF THE TOWN. OF BYRON,
No. *Jan. 7th*, 1873.

Received of Wright C. Hall forty-eight and $\frac{68}{100}$ dollars, in full for the following State, county, town., and special taxes on the following-described real estate and personal property, due for the year 1872, to wit:

Description.	S.	T.	R.	No. of acres.	State tax.	County tax.	Town. tax.	Dis. sch. tax.	R'd B. tax.	Dog tax.	Total tax.
				Acres.100ths.	*Dolls. Cts.*	*Dolls. Cts.*	*Dolls. Cts.*	*Dolls. Cts.*	*Dolls. Cts.*	*Dolls Cts.*	*Dolls. Cts.*
S. E. ¼ S. W. ¼	7	25	11	39	3 20	1 58	51	1 92	85	.....	8 06
N. p't S. W. ¼ S. E. ¼..	7	25	11	38	1 83	91	30	1 10	49	.....	4 63
P't W. ¼ N. E. ¼.....	18	25	11	71	4 05	2 00	65	2 43	1 08	.....	10 21
E. ½ N. W. ¼	18	25	11	80. 28	4 10	2 02	66	2 46	1 09	.....	10 33
Personal property	....	....	....	.....	5 73	2 83	92	3 44	1 53	1 00	15 45
Total tax	....	....	....	.....	.....	.....	.....	.....	.....	.....	$48 68

M. COOLBAUGH,
Collector of said town.

Tax receipt.

STATE OF ILLINOIS,
Ogle County, ss:

COLLECTOR'S OFFICE OF BYRON TOWNSHIP,
Byron, Ogle County, Ill., A. D. 1864.

Received of W. C. Hall the sum of twenty seven $\frac{51}{100}$ dollars, the same being the full amount of taxes due for A. D. 1863 on his personal property, and on the following real estate, to wit:

			R.	Acres.	St. tax.	Co. tax.	Dist. school tax.	Dist. road tax.	Road and B. tax.	War tax.	Tot'l tx.
S. p't S. E. S. W. ¼..	7	25	11	7	1 35	88	1 32	.....	30	88	4 73
P't W. ½ N. E. ¼....	18	25	11	71	1 64	1 06	3 20	.....	36	1 06	7 32
E. ½ N. W. ¼.....	18	25	11	80.28	1 86	1 21	3 60	.....	41	1 21	8 29
Personal property....	....	....	....	.....	1 97	1 28	1 92	29	43	1 28	7 17
					6 82	4 43	10 04	29	1 50	4 43	27 51

Personal property tax, val'n $256.

Collector of said town.

70 BOSTON, *Oct. 27th*, 1864.

W. C. HALL, Esqr.:

SIR: Your letter of Oct. 12th ins't was duly received. In reply to your statement that I had not named a price which I would take for my claim by paying what is due, if you have purchased the equity of redemption from your father, in that way the law points to you the way to possess yourself of the property. This, I doubt not, you will consider the proper course for you to take. You have occupied the two forty-acre lots on which the mortgage was made by your father to Noyes, who sold the mortgage to me. Since the land was sold by order of the United States court, W'm Miller wrote me that he had let the land to you for the year next succeeding the sale, and also the following year; and I have reason to believe you occupy it this year. You have not shown a disposition to make return for its use and occupation by you, and I cannot see how you can appeal to my sympathy in your case, when you show no disposition to deal fairly or honestly by me. A clean statement from you might induce me to look at your appeal with some consideration; but as the matter now stands, it appears to me that both you and M'r Miller are disposed to take advantage of me from the fact of my living at so great a distance as to make it exceedingly difficult for me to pay that attention to my interest in Illinois that I may *to* do by visit-
71 ing your section with a view to get my rights fairly established. If you are disposed to state to me what you intend to do in relation to your occupation and use of the eighty acres, you will please to do so at an early day; until then, I shall remain

Yours, truly,

SAMUEL L. WOODARD.

Defendant's proofs.

On behalf of defendant was offered the depositions of Lauren A. Noyes, Adam S. Noyes, Henry C. Noyes, together with the exhibits thereto attached, which depositions are now on file in said cause, which was all the evidence introduced by said defendant, and which are in the words and figures following, to wit:

Deposition of Adam S. Noyes.

Depositions of ADAM S. NOYES and LAUREN A. NOYES, taken before Edward D. Loring, justice of the peace, at Boston, in the State of Massachusetts, on the 30th day of August, A. D. 1873.

Int. 1. Your full name, residence, and occupation.

Ans. Adam Symodor Noyes; Boston, (East.) Assist my son in business.

Int. 2. Are you the father of the d'f'ts in this suit?

Ans. Yes, sir.

Int. 3. Do you know the complainant, Wright C. Hall?

Ans. Yes, sir.

Int. 4. Where were you residing in 1865?

Ans. In Illinois; Ridolt, Stephenson County.

Int. 5. Do you know this tract of land in question?

Ans. Yes, sir; have been on it a number of times.

Int. 6. State what you know of the ownership thereof in 1865 & since, & what you have had to do with it.

72 Ans. In 1865, my son, L. A. Noyes, bought its bond for deed. I had it registered. I let it to Wright C. Hall for that year; he gave his note for fifty dollars. He could not pay it then; said if I would wait till January, he would pay the money if he had to borrow it. I went after it a number of times; he put me off a number of times. In the fall of 1866 I left the note for suit.

Int. 7. Was it sued?

Ans. Yes.

Int. 8. What was the result?

Ans. Hall swore he received no value, & suit dismissed. Hall wrote to me the water had washed off his hay and the fence, & wanted me to come down & help put up the fences.

Int. 9. When did M'r Hall make known to you of a claim to this property?

Ans. He never made to me any claim to this property; but wanted to pay it.

Int. 10. What passed between you & him in reference to his application to buy?

Ans. He wanted me to write to my son what he would take for it. He wrote back, it cost me sixteen hundred dollars by way of trade. Hall offered me one thousand dollars for it.

Int. 11. When was this?

Ans. The summer he rented the property, I think.

Int. 12. What became of this note?

Ans. It was sent with other papers to Harry Noyes, at Chicago, & was destroyed in the fire.

Int. 13. What was that note given for?

Ans. For rents of the place, so specified in note.

73 Int. 14. Did any letters pass from Hall to you in reference to buying this land?

Ans. I think not; no.

Interrogatories propounded in cross-examination by pl'ff's att'y:

X-int. 1. How near to the property in question did you live?

Ans. I think about 14 miles.

Int. 2. How long prior to 1865 & and how long after did you live there?

Ans. Moved to Stepenson County in 1864, I think.

Int. 3. Were you living in those parts from 1858 to 1865?

Ans. No, sir; not in 1858.

Int. 4. When did you move there?

Ans. Moved there in 1865.

Int. 5. Were you acquainted with Luther Hall, the father of complainant?

Ans. Yes; well acquainted.

Int. 6. Did you know, at the time, of your son's taking mortgage on this land?

Ans. I did not.

Int. 7. When did you first know of your son's connection with this property?

Ans. I don't know; heard of it somewhere about 1859.

Int. 8. Did you see Luther Hall frequently between 1860 & 1865?

Ans. Not very often; not more than once or twice; can't say.

Int. 9. Did you see Wright C. Hall frequently during that time?

74 Ans. Yes, frequently; was at our house visiting fall after I moved there.

Int. 10. Did you know where Wright C. Hall was living from 1860 to 1866?

Ans. No, I don't; part of the time lived on land adjoining the land in question.

Int. 11. Up to what date did you live in the locality of this property?

Ans. Until one year ago last April.

Int. 12. Do you know who occupied or used this eighty acres in question from 1865 to time you left?

Ans. No.

Int. 13. Did Hall pay you any rent?

Ans. No, sir; he gave the note referred to.

ADAM SYMODOR NOYES.

Deposition of Lauren A. Noyes.

Int. 1. What is your name, residence, & occupation?

Ans. Lauren A. Noyes; 33 Webster st., E. Boston; occupation, stable keeper.

Int. 2. Are you the def't in the suit of Wright C. Hall & Lauren A. Noyes?

Ans. Yes.

Int. 3. Do you know the complainant?

Ans. Yes.

Int. 4. Do you know this property, which is in question?

Ans. Yes, sir.

Int. 5. Whether or not you make claim to the property as yours?

Ans. I do.

Int. 6. Please state the history of that property, as far as relates to your connection with it.

75 Ans. In April 26, A. D. 1858, I took mortgage on this property for ten hundred & seventy-five dollars, *payable* five hundred & thirty-five dollars payable in one year from date, five hundred & forty-five dollars payable in two years from date; interest at six per cent. I think in 1861 I sold the mortgage to Samuel L. Woodward, of Boston.

Int. 8. Whether or not & of whom did you purchase this property?

Ans. I purchased it of Daniel M. Pickering.

Int. 9. State how & when you took possession.

Ans. Bought the property about the first of March, 1865, & took possession immediately.

Int. 10. When & from whom did you receive your deed?

Ans. I received my bond for deed from Daniel M. Pickering in March 1, 1865. I think that is the date.

Int. 11. Whether or not you placed any one in charge of that property when you took possession.

Ans. I did; placed my father in charge of it.

Int. 12. With what authority?

Ans. To occupy, let, or sell it, or any part of it.

Int. 13. What was done under that power?

Ans. He let it to M'r Wright C. Hall for one year, the complainant in this action.

Int. 14. How long did he occupy?

Ans. He gave his note for fifty dollars, payable October 1, 1865, for the use of the land.

76 Int. 15. What has become of that note?

Ans. It was burned up in the Chicago fire. Also the bond.

Int. 16. When did you see Wright C. Hall, the complainant, last?

Ans. In October, 1871.

Int. 17. Where & what passed between you at that time?

Ans. I saw him at his place & asked him why he occupied it. He said he should not give it up without a lawsuit. He asked me what I would take for it. I think I told him I would take thirty-five dollars an acre.

Int. 18. Whether or not he at any time exhibited any contract between himself & father, Luther Hall, in reference to this property?

Ans. No, sir; he did not.

Int. 19. Whether or not he made any claim to an interest in this property prior to October, 1871.

(Question objected to by pl'ff's att'y.)

Ans. No, he did not.

Int. 20. Do you know who has paid the taxes upon this property since 1865?

Ans. I have paid them.

Int. 21. Whether or not said Wright C. Hall has made other applications to you for the purchase of said property?

Ans. He has, through father.

Int. 22. Whether or not you ever heard of any contract or agreement between Wright C. Hall & his father, giving Wright C. Hall

77 an interest in this property?

Ans. No.

Int. 23. Whether or not you were interested, directly or indirectly, in the foreclosure of said mortgage by said Woodward?

Ans. I was not.

Cross-interrogatories propounded by pl'ff's att'y.

X-int. 1. Where is the land situated?

Ans. In the town of Byron, Ogle County, Illinois.

X-int. 2. Who was the grantor in the mortgage you have mentioned?

Ans. Luther & Olive Hall.

X-int. 3. What was the consideration of the mortgage?

Ans. Ten hundred & seventy-five dollars.

X-int. 4. Was this sum paid in money? If not, how?

Ans. I sold him some property for the mortgage.

X-int. 5. What was the property?

Ans. A stallion, gig, & equipments.

X-int. 6. Was that the entire consideration?

Ans. It was.

X-int. 7. How long prior 1861 had you known Samuel Woodward?

Ans. I had known him since 1849 or 1850.

X-int. 8. What was his business?

Ans. Expressman.

X-int. 9. Had you prior to 1861 had any business transactions with M'r Woodward?

Ans. Yes; used to hire money of him, & we had personal property together.

78 Int. 10. Did you transfer the notes & mortgage mentioned before or after the maturity of the notes?

Ans. After the maturity, I think. I am not positive. After the maturity of both notes, or after one.

X-int. 11. What consideration, if any, did M'r Woodward pay you for these notes?

Ans. The face of them. They were turned in to settle my indebtedness to M'r Woodward.

X-int. 12. Do you know how these notes were finally satisfied?

Ans. I do not. Only I have heard they foreclosed & got judgment for the balance. Don't know how much.

X-int. 13. Do you know what became of the stallion?

Ans. Don't know what disposition M'r Hall made of him.

X-int. 14. Do you know in whose possession the stallion has been?

Ans. I have had him in my possession; owned him; bought him of M'r Woodward.

X-int. 15. What did you pay for him?

Ans. I paid four hundred & fifteen dollars, & paid bill of about seventy-five or eighty-five dollars on him.

X-int. 16. Do you know how he came into M'r Woodward's possession?

Ans. I do not.

X-int. 17. What was the value of the gig & equipments, & did you repurchase them?

Ans. About two hundred dollars. I did not repurchase the gig & equipments.

79 X-int. 18. What was the value of this land at the time you took the mortgage & also at the date of your purchase from Pickering?

(Objected to in full by def't's att'y.)

Ans. I don't know the value of the property when I took the mortgage. When I purchased of M'r Pickering I took it at twenty (20) dollars an acre, in trade.

X-int. 19. How long prior to 1865 had you known Mr. Pickering?

Ans. I knew him since 1849.

X-int. 20. What was his business and where was he residing about 1861?

Ans. In Boston; and his business, a mechanic.

X-int. 21. Do you know whether or not he was at that time engaged in any business or enterprise with Samuel Woodward?

Ans. I don't know.

X-int. 22. Had you about the year 1861 any business transactions with M'r Pickering?

Ans. I think not.

X-int. 23. Were you owing M'r Pickering or he you about October, 1861?

Ans. I cannot say.

X-int. 24. Were you about that time in the habit of borrowing money of M'r Pickering?

Ans. No; not at that time.

X int. 25. Did you furnish any portion of the money with which M'r Pickering bought this property?

Ans. No, sir.

X-int. 26. Did you know it was to be sold, or give him any information in regard to it?

Ans. No; nothing to do with it whatever.

80 X-int. 27. How many times were you in Ogle County, Ill's, from 1858 to 1866, and at what time during that period?

Ans. There in Dec., 1859, and 1862, I think.

X-int. 28. How near this property were you stopping in 1862?

Ans. About two miles.

X-int. 29. During what period was your father acting as your agent of this property?

Ans. 1865 & 1866.

X-int. 30. Did you ever revoke the power of att'y given your father?

Ans. Never did.

X-int. 31. Were you ever in actual possession of any portion of this property from 1865 & forward?

Ans. Never lived upon it.

X-int. 32. Is it not a fact that the complainant, Hall, had been in possession & using the whole of this land since 1865?

Ans. I haven't been there—couldn't tell you who has used it.

X-int. 33. Do you know, of your own knowledge, that the taxes on this property have been paid for you or in your name since 1865; &, if yea, for what year or years?

Ans. I forwarded the money to my brother, & suppose he paid them for me. I wrote him frequently to keep the taxes paid.

Int. 34. Was the fifty-dollar note given by the complainant ever paid, or was any suit brought on it? &, if suit was brought, state with what result.

81 Ans. No; have heard suit was brought, & suit dismissed for want of jurisdiction.

Int. 35. You stated in direct examination that complainant Hall made no claim for this property prior to the year 1871.

Ans. Not of me.

Int. 36. Do you what, if any, property was sold under the judgment procured by Samuel Woodward & Luther Hall on the notes as signed by you?

Ans. I don't know.

L. A. NOYES.

Testimony of Lauren A. Noyes.

Deposition of LAUREN A. NOYES, taken at Boston, in the State of Massachusetts, by Coleman Cook, justice of the peace for said district, on the 30th day of April, A. D. 1874.

Int. 1. State whether or not you know who paid the taxes on the premises in question from the year A. D. 1862 until 1867.

Ans. I do not know.

Int. 2. John Ives, a witness in this case, has sworn that in the month of January or February, A. D. 1861, he met you at your stables in Boston, and stated to him at that time that Wright C. Hall must settle matters or they would have to foreclose the mortgage. Was there any such conversation between you? Also state what conversation did occur at that time, if any.

Ans. There was no such conversation between us; cannot remember

what conversation passed between us. I might have said
82 casually that Mess'rs Woodward & Pickering would probably want their money.

Int. 3. State whether or not on the 27th day of October, 1864, or at any time before or since, you have had any knowledge of Samuel L. Woodward's writing to Wright C. Hall concerning the premises in question. Also, did you ever authorize or request him to write to said Wright C. Hall.

Ans. No, no.

Int. 4. State any other fact material to the issues in this case which you have heretofore neglected to state.

(Objected to.)

Ans. I have nothing further to state.

X-int. If you shall state that you know who paid taxes on said premises during the years from 1862 to 1867, state further how you know, whence and in what manner you obtained your information, and what disposition was made of the tax-receipts.

Ans. I know nothing as to who paid the taxes during said time, nor do I know anything of the disposition of the tax-receipts.

LAUREN A. NOYES.

Deposition of A. S. NOYES, taken at Boston, in the State of Massachusetts, by Coleman Cook, justice of the peace for said district, on the 30th day of April, A. D. 1874.

Int. 1. State whether or not you know who paid the taxes on
83 the premises in question from the year 1862 until the year 1867.

Ans. I do not know.

X-int. 1. If you shall state that you know who paid taxes on said premises during the years from 1862 to 1867, state further how you know, whence and in what manner you obtained your information, and what disposition was made of the tax-receipts.

Ans. I do not know who paid the taxes you mention; don't know about the tax-receipts.

A. S. NOYES.

Deposition of Henry C. Noyes.

Deposition of HENRY C. NOYES, taken before Edward A. Fisher, notary public, at Chicago, in the county of Cook and State of Illinois, on the 4th day of May, A. D. 1874.

Q. 1. What is your name, age, residence, and occupation?

Ans. My name is Henry C. Noyes; am of lawful age; reside at No. 28 Willard Place, in Chicago; am by profession attorney at law.

Q. 2. State whether or not in the year 1871 you had in your possession a certain promissory note executed by Wright C. Hall, and payable to A. S. Noyes; if yea, where is the note?

Ans. I did have a note executed by Wright C. Hall, payable to either A. S. Noyes or L. A. Noyes; I am not sure which. The note was for fifty ($50) dollars; it was burned up on the eighth or ninth of October, A. D. 1871, in my office amongst other papers, in Otis Block, Chicago. The note read, to the best of my knowledge and remembrance, as follows:

84 $50.00 BYRON, OGLE COUNTY, ILLINOIS,
March 1st, 1865.

For value received, I promise to pay A. S. Noyes, or order, fifty dollars, six months after date; this note given for the rent of the east half

(½) of the northwest quarter (¼) of section eighteen, (18,) town. twenty-five, (25,) range eleven (11) east, same being situated in the county of Ogle and State of Illinois, for the year 1865.

WRIGHT C. HALL.

Q. 3. State whether or not you had in the same year, viz, 1871, a certain bond wherein Daniel N. Pickering, of Boston, Massachusetts, was obligor and the defendant obligee.

Ans. I had. It was burned up with the note at the time and place aforementioned. I now produce in evidence a true and certified copy of the bond, marked "Exhibit A."

Q. 4. State whether or not in the year 1871, and at divers times since that time, you have been familiar with and have seen the premises in controversy.

Ans. I saw the land in 1861 and a great many times since. I resided within a few miles of the land for several years.

Q. 5. State whether or not you know the value of land equal in quality in the same locality at and since the year 1861.

Ans. I do.

Q. 6. State, as near as you can, the value of the land in question in the year 1861, and also its value at the time this suit was
85 commenced.

Ans. In the year 1861 the land in question was worth not over $15.00 per acre. At the time this suit was commenced the premises were worth from $30 to $40.00 per acre.

(Objected to.)

Q. 7. State whether or not you have in your possession a deed conveying the premises in question from Daniel N. Pickering and wife to the defendant.

Ans. I have, and here I produce it in evidence, marked "Exhibit B."

Q. 8. State whether or not, to your knowledge, Wright C. Hall has made any claim of ownership other than as a tenant of the defendant to the premises in question.

Ans. Not to my knowledge. I never heard of such a thing until this suit was commenced.

HENRY C. NOYES.

EXHIBIT A.

No. 44588. Filed July 19, 1866, at 12 o'clock m.

[Rev. stamp, $1.00, canc'l'd.]

Know all men by these presents that I, Daniel N. Pickering, of the city of Boston, county of Suffolk, and Commonwealth of Massachusetts, machinist, am held and firmly bound unto Lauren A. Noyes, of said Boston, "stabler," in the sum of sixteen hundred dollars, (1,600,) to be paid to said Lauren A. Noyes, his executors, administrators, and assigns, to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, firmly by these
86 presents. Sealed with my seal this thirteenth day of March, in the year of our Lord eighteen hundred and sixty-five.

The condition of this obligation is such that the above bounden Daniel N. Pickering, his heirs, executors, administrators, or any of them, shall well and truly execute and deliver to said Noyes a good and sufficient deed of warranty of a certain lot of land situated in the town of Byron,

Ogle County, and State of Illinois; the same being the east half of the northwest quarter of section eighteen "J," twenty-five "R," eleven eighty acres more or less, in three years from date hereof; as a condition-precedent said Lauren A. Noyes having first paid to said Pickering or his legal representatives, in three years from the first day of March, A. D. 1865, with interest thereon semi-annually, the sum of nine hundred and forty-seven $\frac{81}{100}$ dollars, agreeably to the tenor of his note, payable to said Daniel N. Pickering, or order, dated March 1st, 1865, and payable in three years from its date. Said Pickering hereby gives said Noyes immediate possession of the land above described, "but reserves the right to sell the same at any time within the three years herein named, said Pickering according to said Noyes in the sum o sixteen hundred dollars, less the amount of principal and interest unpaid on the above-mentioned note at the time of said conveyance."

87 Should the contemplated conveyance be made, the conditions o this obligation being complied with, then is to be void and of no effect, or else to remain in full force and virtue of law.

In witness whereof I hereunto set my hand and seal the day and yea first above written.

DANIEL N. PICKERING. [SEAL.

Signed, sealed, and delivered in presence of—
EMMA J. PALMER.

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

Be it remembered that on the thirty-first day of March, in the year of our Lord one thousand eight hundred and sixty-six, in the city and county aforesaid, before me, Geo. T. Angell, a commissioner of the State of Illinois in said Boston, also a notary public in and for the county o Suffolk, personally appeared Daniel N. Pickering, who is personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same and acknowledged that he had executed the same for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official and notarial seals this thirty-first day of March, A. D. 1866.

[SEAL.] GEO. T. ANGELL,

88 *Commissioner of the State of Illinois in said Boston;*
[SEAL.] *also a notary public in & for the county of Suffolk.*

STATE OF ILLINOIS,
Ogle County, ss:

I, Henry P. Lason, clerk of the circuit court, and ex-officio recorder in and for said county, do hereby certify that the above and foregoing is a true, full, and perfect copy of an instrument of writing of record in the recorder's office in said county, and that the same was filed in said office on the 19th day of July, A. D. 1866, at the hour of 12 o'clock m., and recorded in book C, of miscellaneous records, on page 493, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at said office, in the city of Oregon, in said county, this sixth day of May, A. D. 1874.

[SEAL.]

H. P. LASON,
Clerk and Recorder,
By E. K. LIGHT,
Deputy Recorder.

The foregoing deposition may be filed, no objection being taken on account of no notice being given and all formal objections waived.

May 9th, 1874.

J. HENRY THEMAN,
Sol. for Complainant.

89 EXHIBIT B.—*Warranty deed.*

Know all men by these presents, that I, Daniel N. Pickering, of the city of Boston, in the county of Suffolk and State of Massachusetts, grantor, in consideration of sixteen hundred dollars, ($1,600,) to me paid by Lauren A. Noyes, of the city, county, and Commonwealth aforesaid, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Lauren A. Noyes a certain lot or parcel of land situated in the county of Ogle and State of Illinois, to wit, the east half of the northwest quarter of section eighteen, (18,) town. twenty-five, (25,) range eleven (11) east, containing eighty (80) acres, more or less, together with all and singular the appurtenances thereto belonging or in any wise appertaining, being the same premises conveyed to me, the grantor, by J. Tilden Moulton, master in chancery, United States circuit court, northern district of Illinois, by deed dated October 18th, 1861, and recorded with Ogle County deeds, book 27, page 633:

To have and to hold the above-granted premises, with all the privileges and appurtenances to the same belonging, to the said Lauren A. Noyes, and his heirs and assigns, to their use and behalf, forever.

And I, the said grantor, for myself and my heirs, executors, and administrators, do covenant with the said grantee, his heirs and
90 assigns, that I am lawfully seized in fee-simple of the aforegranted premises; that they are free from all lawful incumbrances existing March first, A. D. eighteen hundred sixty-five, the grantee having been in possession since that date; that I have good right to sell and convey the same to the said grantee, his heirs and assigns, forever, as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantee and his heirs and assigns forever, against the lawful claims and demands of all persons existing March first, A. D. eighteen hundred sixty-five.

In witness whereof we, the said Daniel N. Pickering and Eliza M. Pickering, the wife of the said Daniel N. Pickering, in token of our release of all right of or to both dower and homestead in the granted premises, have hereunto set our hands and seals this first (1st) day of September, in the year of our Lord eighteen hundred and seventy-one.

DANIEL N. PICKERING. [SEAL.]
ELIZA M. PICKERING. [SEAL.]

Signed, sealed, and delivered in presence of—

E. N. PICKERING to D. N. P.
GEO. T. ANGELL to both.

[Stamp, D. N. P., Feb'y 1st, 1872.]

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss., 187 :

Then personally appeared the above-named Daniel N. Pickering, and acknowledged the above instrument to be his free act and deed, before me.

Justice of the Peace.

Received and entered with deeds, Lib. Fol.

91 STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

Be it remembered, that on the first day of February, in the year of our Lord eighteen hundred and seventy-two, in the city and county aforesaid, before me, Geo. T. Angell, a commissioner of Illinois, residing in Boston, also a notary public in and for said county of Suffolk, personally appeared Daniel N. Pickering and Eliza M. Pickering, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing deed, as having executed the same, and acknowledged that they had executed the same for the uses and purposes therein expressed; and the said Eliza M. Pickering, wife of the said Daniel N. Pickering, being of lawful age, and having been by me separate and apart from her said husband examined, and the contents of the said deed and the homestead laws of Illinois fully made known and explained to her by me, she acknowledged that she had executed the same and relinquished her dower and rights of homestead in and to the lands and tenements therein mentioned, voluntarily and without compulsion of her said husband.

In witness whereof I have hereunto set my hand and affixed
[SEAL.] my official and notarial seals this 1st day of February, A. D. 1872.

[SEAL.] GEO. T. ANGELL,
Commissioner of Illinois and Notary Public in Boston.

92 STATE OF ILLINOIS,
Ogle County:

This instrument filed for record on the 2nd day of M'ch, 1872, at 10 o'clock a. m., and duly recorded in book 53 of deeds, page 29.

F. G. PETRIE.
H. W. BLODGETT.

(Endorsed:) Filed August 8th, 1874. W'm H. Bradley, clerk.

And afterwards, to wit, on the 7th day of October, A. D. 1874, said defendant filed his bond in appeal in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal-bond.

Know all men by these presents that we, Lauren A. Noyes and J. McGregor Adams, of the county of Cook and State of Illinois, are held and firmly bound unto Wright C. Hall, of the county of Ogle, State of Illinois, in the sum of twenty-five hundred dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Witness our hands and seals 6th day of October, A. D. eighteen hundred and seventy-four.

93 The condition of the above obligation is such, that whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, held on the 8th day of August, A. D. 1874, in a suit depending in said court between Wright C. Hall, complainant, and said Lauren A. Noyes, defendant, on the chancery side of said court, a decree was rendered, and the said Lauren A. Noyes having obtained an appeal to reverse the said decree in the aforesaid suit:

Now the condition of the above obligation is such, that if the said Lauren A. Noyes shall prosecute his said appeal with effect, and answer

all damages and costs if he fail to prosecute said appeal with effect, then this above obligation to be void; otherwise to remain in full force.

LAUREN A. NOYES. [SEAL.]
J. MACGREGOR ADAMS. [SEAL.]

Approved. H. W. BLODGETT, *Judge.*

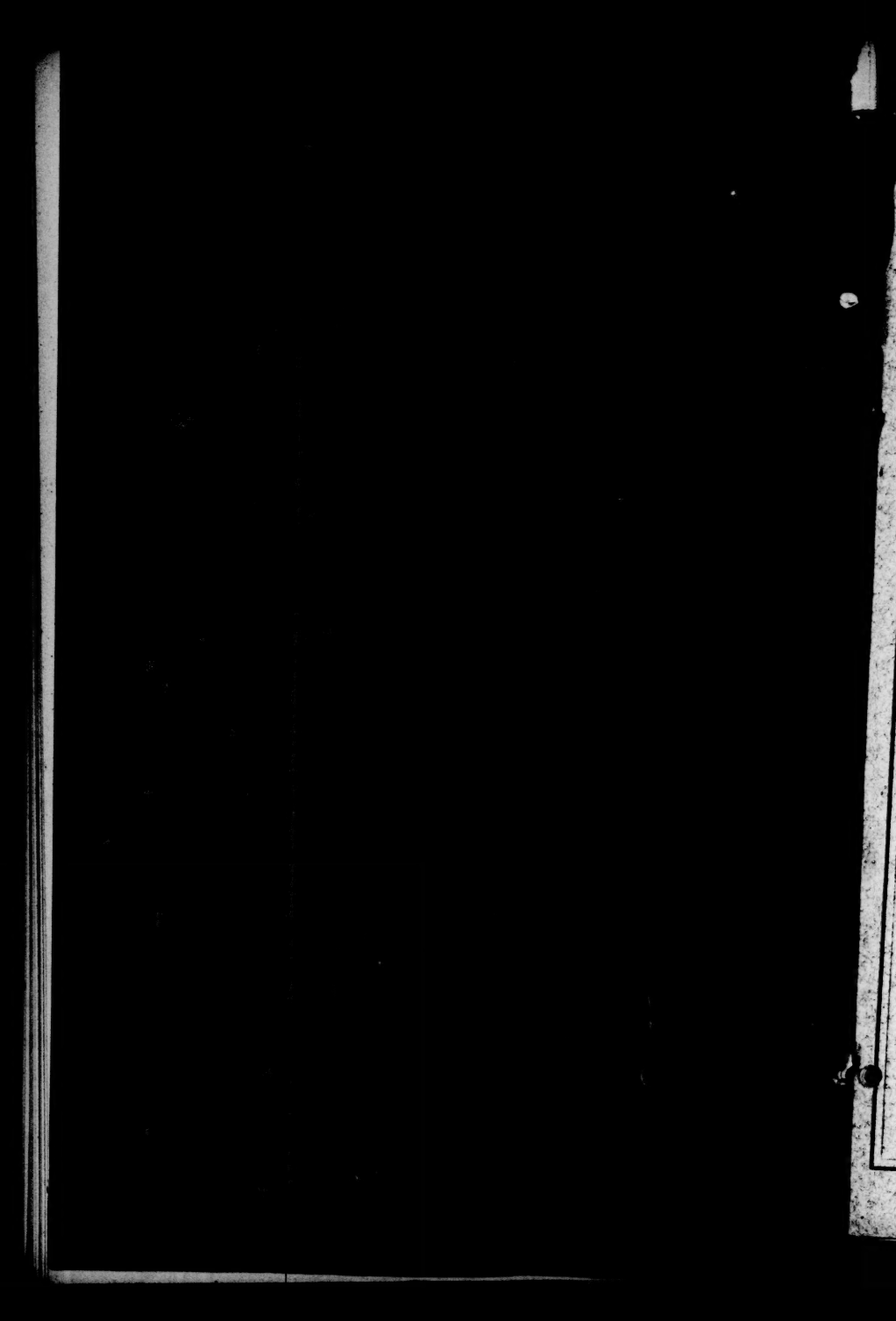
(Endorsed:) Filed Oct. 7, 1874. W'm H. Bradley, *Clk.*

94 NORTHERN DISTRICT OF ILLINOIS, ss:

I, William H. Bradley, clerk of the circuit court of the United States for said District, and keeper of the seal thereof, do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Lauren A. Noyes, appellant, vs. Wright C. Hall, appellee, as the same remain of record and on file in my office. I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said District, this twenty-ninth day of September, A. D. 1875, and of our Independence the 100th year.

[SEAL.] WM H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 175. Lauren A. Noyes, appellant, vs Wright C. Hall. N. Illinois C. C. U. S. Filed 9th October, 1875.



IN THE

SUPREME COURT OF THE UNITED STATES.

LAUREN A. NOYES,
Appellant,
vs.
WRIGHT C. HALL,
Appellee.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

APPELLANT'S BRIEF.

SCULLY & Co., Legal Printers, Metropolitan Block, Chicago

Supreme Court of the United States.

LAUREN A. NOYES, APPELLANT,

vs.

WRIGHT C. HALL, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ASSIGNMENT OF ERROR.

And now comes Lauren A. Noyes, the appellant, by Elliott Anthony, his counsel, and says that in the record and proceedings aforesaid there is manifest error, in this, viz.:

1st. The decree is not supported by the evidence.

2d. The decree is against the evidence.

3d. The decree is against the law.

4th. The case made by the bill is not such an one as entitles the appellees to the relief prayed.

5th. The Court erred in holding that neither an actual tender of the money nor the payment of the money into Court was necessary to enable the appellee to recover.

6th. The Court erred in finding that the appellee as tenant of appellant was not estopped from setting up title against his said landlord.

7th. The Court erred in holding that the appellee was entitled to redeem.

8th. The Court erred in overruling motion for a new trial.

9th. The Court erred in finding that the appellee was not estopped from recovering by reason of laches.

10th. The Court erred in finding that appellee was not barred from recovering by reason of fraud.

For which and divers other errors appearing of record, the said appellant prays that the said judgment may be reversed.

ELLIOTT ANTHONY,
Attorney for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

LAUREN A. NOYES,
Appellant,
vs.
WRIGHT C. HALL,
Appellee.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

The appellant respectfully submits that the appellee has not made such a case as to warrant a court of equity in granting him relief in the premises: and the appellant invites close inspection to the record in the case, and seeks a reversal of the decree of the Circuit Court, for the following reasons:

1st. That the bill does not show or state any reason why this suit, if any cause of action ever existed, was not commenced until over eleven years after the time appellee claims his right accrued to redeem. (Pages 1, 2, 3, 4 and 5, of abstract.)

2nd. That no fraud in the execution or foreclosure of the mortgage, mentioned in the bill, is charged. (Same pages.)

3rd. That the bill claims no tender of the amount required to redeem was ever made to any one of the grantees of the land in question; but only states that appellee has

been willing and has offered to redeem the premises by the payment of $400, with ten per cent. interest, from the date of said sale to time of said tender. (Same pages.) The offer to redeem, mentioned in the bill, is not sustained by any proof whatever, as will hereinafter appear.

4th. That the contracts, which embrace other lands with the land in question, was not executed until after one year and one month had elapsed subsequent to the execution of the mortgage; the mortgage was executed, April 26, 1858. (Page 23.) Contract, June 24th, 1859. (Page 21.) The contract was never placed upon record to warn the appellant or any one of the grantees of the land in question, of the claim made by appellee. (Page 21.)

The quit-claim deed between Luther Hall and Olive Hall to appellee, executed Feb. 10th, and filed for record, Feb. 19, 1864, does not purport to be made in fulfillment of the terms of the contract, and does not in any way refer to it. (Page 22.)

The only claim made by appellee to the land in question, is that he held the contract for the land in question, and was in possession at the time of the foreclosure suit and was not made a party to the suit, and that he has remained in possession ever since, and therefore claims a right in equity to redeem if no other facts were shown and the above fully proved, might, under some circumstances, give him a right to redeem.

But how his claim is supported will be shown by the evidence. The contract referred to, in the evidence (page 21) was made subsequent to the mortgage referred to, and embraced other lands with the land in question, was apparently kept off record for the purpose of deceiving the appellant and the other grantees of the land. It seems, by

the evidence of appellee, that he did not occupy the land in question, exclusively; that he cultivated it with the other land and used the stable for his horses, prior to commencement of foreclosure suit. (Ans. to inter. 17, page 14.)

The possession was not absolute, but would be such as would be natural under the circumstances. The father of appellee residing near by in a village, and such a possession as of itself would not put any one purchasing the land upon inquiry, and when asked if any one was tilling the land with him, answers, "I think not." (Ans. to cross-inter. 51, page 18.) Appellee moved from the premises in question, in the fall of 1860, six months before the foreclosure suit was commenced, and has never resided on the premises since. (Ans. to cross-inter. 48, page 18.)

The only possession at the time of the foreclosure suit was that he was simply tilling the land. The improvements made upon the land in question amounts to little or nothing (pages 18 and 19), and no equity can be claimed upon that ground, which shows that the contract was kept a secret by him and his father, for the purpose of making appellant trouble in case the land should grow valuable, so that it would pay him to redeem.

The contract shows appellee was to pay his father $3,000 for the entire tract of land mentioned (page 21), and his evidence shows that he had only paid between $700 and $800 on the whole tract, at the time the mortgage was foreclosed. (Ans. to inter. 7, page 13.) His paying so small an amount, and knowing of the existence of the mortgage (Ans. to inter. 36, page 16), and of the foreclosure suit, he had ample remedy at the time to annul the contract or pay the mortgage and force its credit as against the purchase money; but all these remedies he did not avail himself of for the apparent reason that he was not in condition

to pay the amount of the mortgage, or that he preferred to wait and see if the land increased in value, so that it would be a good speculation to apply to a court of equity at some future time, and force his supposed right to redeem.

Appellee knew all about the foreclosure suit, talked with his father and counselled an attorney, at Oregon, in regard to the matter. (Ans. to cross-inters. 30, 31, 32, 33, page 17.) He knew all about the time the sale was to take place; intended to be there, and was there a few minutes after the sale (Ans. to inter. 35 and 41, page 17), and prior to the sale, saw a letter from the attorney of the mortgagee to his father, informing him that unless the matter was settled, the land would be sold. (Ans. to inter. 44, 45 and 46, page 18.)

The taxes claimed to have been paid by appellee do not show a continuous payment for seven years, as required by the statutes of Illinois. Two years' taxes were paid during the time of the first and last payment made by appellee by appellant.

The letter offered in evidence by appellee (page 31), shows that Miller had let the land to appellee after the sale under the decree to this charge or intimation that appellee occupied the land as a tenant of the purchaser. After the sale under decree to the date of the letter the appellee does not deny, and makes no explanation in his evidence; and in the same letter, Woodard advises him of his remedy at law, if he has any rights; but this he does not seek until 8 years have elapsed from the writing of said letter, and over eleven years from the date of the foreclosure suit.

The evidence for appellant shows clearly that the appellee never made his interest known to appellant, but purposely concealed it from him; that from the time the sale

was made under the decree of foreclosure, the appellee has been in possession as the tenant of the grantees, deriving their title through said sale, and has never pretended to hold possession under any other or different title, except as tenant as aforesaid, until a short time previous to the commencement of an ejectment suit referred to in the bill. That he concealed his interest, is shown by the evidence. (Ans. to inter. 9 and 10, page 32.)

A. S. Noyes, the agent for appellant, saw appellee often between 1860 and 1865, visiting back and forth, and yet he never heard that appellee claimed an interest in the land, and to this the appellee does not deny the fact that appellee leased the land in question, and gave his note (Ans. inter. 2, page 37) for the rent, shows conclusively that he has purposely concealed his interest from appellant all these years.

The testimony of H. C. Noyes is to the effect that he resided within a few miles of the land for several years, (Ans. to inter. 4, page 38,) and saw the land a great many times, and never heard of appellant claiming any interest until the commencement of the ejectment suit.

The evidence shows that the land in 1861, at the time the sale was made under foreclosure suit, was not worth over $15.00 per acre, and at the time the suit was commenced it was worth from $30.00 to $40.00 per acre. (Ans. to inter. 6, page 38). This is not denied by any other testimony given in the case. The bill and answer admit that Pickering derived his title to the land from Master's sale under decree of foreclosure, and evidence shows that Pickering gave bond for a deed to appellant for the land on the 13th day of March, 1865, and afterwards gave warranty deed. (Exhibits A and B, pages 38 and 40.)

The evidence further shows that at the time Pickering gave appellant bond for a deed the land was unoccupied, and nothing upon record to show that appellee had any interest in the land, appellee being a resident of the State of Wisconsin at the time. (Answer to inter. 49, page 18.)

The quit claim deed which was on record at the time the bond was given, was for other land with the land in question, and made no reference to the unrecorded contract, and as appellee had claimed no interest in the land previous, it was not notice to appellant of his title, the deed being made by a then stranger to the title, and the appellant claims his rights as an innocent purchaser without notice of appellee's supposed claim.

The facts all the way through show that appellee has grossly and fraudulently deceived appellant, when appellee knew that the mortgage was upon the land, and yet no arrangement is made between him and his father as to its payment, according to his evidence, and the fact that his father and brother, the only witnesses to the transaction, were dead at the time of commencing this suit, throws a suspicion upon appellee's evidence in regard to the purchase of the land, and as to the payments to his father. The money which was paid upon the contract was undoubtedly paid for the other land mentioned in the contract, and not upon the land in question. The fact that he concealed his interest for many years until the land doubled in value, shows fraud upon the face of it. The executing of the note, and that it was given for rent of the land in question, is not disputed, and that he took possession of the land as tenant at the time he gave said note, is corroborated by the date of the note (page 37) and the time he came from Wisconsin. (Appellee's testimony, Ans. to inter. 49, page 18.)

And the law is not questioned that a tenant cannot set up a title against his landlord while he remains in possession as tenant. Appellee's rights in the first instance are entirely technical, and are not founded in equity; and then, that he can sleep upon his rights for eleven years and, until the land has doubled in value, then ask the aid of a court of equity, is a claim novel to well established rules of law. That he is estopped by his own acts in the premises cannot be questioned; that being out of possession at the time appellant acquired title, and entering as a tenant of appellant, and afterwards promising to pay the rent if the time of the payment of the note was extended (Ans. to inter. 6, page 32) and then asking the agent of appellant to come down and fix the fences upon the land, (Ans. to inter. 8, page 32), all show conclusively that the concealment was intentional and fraudulent. The appellee does not in any manner contradict the evidence of appellant that the interest claimed was all the time concealed.

Ellis & Anthony
Attys for Appellant

No. 175.

IN THE

Supreme Court of the United States.

LAUREN A. NOYES,

vs.

WRIGHT C. HALL.

Appeal from the U. S. Circuit Court for the Northern District of Illinois.

BRIEF FOR APPELLEE.

H. D. BEAM,

Of Counsel for Appellee.

CHICAGO:

PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 151 & 153 FIFTH AVENUE.

1877.

IN THE

Supreme Court of the United States.

LAUREN A. NOYES,

vs.

WRIGHT C. HALL.

Appeal from the U. S. Circuit Court for the Northern District of Illinois.

RRIEF FOR APPELLEE.

MAY IT PLEASE THE COURT:

April 26th, 1858, Luther Hall was tenant in fee of the land in question, being about 80 acres of a farm in Ogle county, Illinois.

On that day by mortgage deed he conveyed the premises to the appellant, to secure the payment of $1,075.00.

On the 4th day of June, 1859, he made a contract in writing for the sale of the same land to his son, Hollis Hall.

In Feburary, 1860, Hollis Hall sold out his interest in this contract to the appellee, who paid him, three hundred dollars down and assumed the conditions of the existing contract, by making a new one with Luther Hall,

bearing the same date, and of the same tenor, (Vide Ex. "A," p. 5, and p. 15.)

In the meantime, in March, 1860, the appellee took possession of the premises, on which his house and stables were located, and enclosed them with other lands, and from thence forward, to the date of this suit, has had open and visible possession. (P. 13, *et seq.* and 21, Int. 3d.) The contract was never recorded, but the money and all taxes, save for two years, were paid by appellee. (Vide., p, 25, *et seq.*)

February 10, 1864, by deed recorded February 19, 1864, Luther Hall, conveyed the premises described in the contract to the appellee. Prior to this, in May, 1861, appellant or Woodward, ostensibly his assignee, brought suit in the Circuit Court for the Northern District of Illinois, to foreclose the rights secured the Halls by the condition of defeasance in the mortgage, but in that suit failed to make appellee a party; a decree was entered and the land sold in October, 1861, by a Master of the Court, and purchased for four hundred dollars, by one D. N. Pickering. The balance of the mortgage indebtedness was satisfied by sales of other property. March 13, 1865, Pickering gave a contract for sale of this land, back to the appellant and original mortgage,—and September 1, 1871, duly reconveyed it to him by deed.

At the October Term, 1872, appellant instituted proceedings in ejectment against the appellee, and appellee filed the bill in the present suit, asking to redeem from the Master's sale, before mentioned, which prayer of the appellee was granted by decree of the Court, and appeal taken as shown.

The following points are suggested against the matters contained in appellant's brief.

1st. Open possession is notice to all subsequent purchasers of the fact that the possessor has, or claims to have title, and they take at their peril, subject to consideration of tenant's rights. *Truesdale* v. *Ford*, 37 Ill., p. 210. Such possession is notice of equal effect as record of deed under the statute.

Cabeen v. *Breckenridge*, 48 Ill., 914

2d. A complainant who brings suit to foreclose interests secured under a mortgage, must make all parties in interest, whose rights by Statute or construction of Law are brought to his notice, parties; and failing so to do, the decree *pro tanto*, is inoperative, and such parties may, as a consequent result, redeem from sale under the proceedings.

Bradley v. *Snyder*, 14 Ill., 263.

Dunlap v. *Wilson*, 32 Ill., 517.

In this case the possession of the appellee was open and continuous from March, 1860, down to the beginning of the present suit, not even excepting the breach for a few months, which the clairvoyance of appellant's counsel assumes to have discovered. The circumstances of the ownership and character of the possession fully satisfy the requirements of the decisions of our Courts, uniformly recognized, which do not require that the possessor should carry his 80 acres in his pocket as he would a silver dollar.

(*Vide Truesdale* v. *Ford*, *supra*.)

Appellee moved on to the land in March, 1860; had

it fenced in with other lands (his beyond dispute in this suit at least) and thenceforward, had it under culture in so far as tillable and otherwise in use the whole period to date of this suit. During 1860 and part of 1861, he had his actual residence on this eighty acres, and for the entire period had his stables built upon it, and his dwelling house within the same enclosure. From October, 1864 to April 1, 1865, appellee was *personally* absent from the property, but, during the time, hired a man to take care of it. (P. 21, int. 3.)

The conclusion is beyond evasion, that appellee was not only a *proper*, but to the end of cutting off his equities, a *necessary* party to the foreclosure proceedings, and the result before remarked, follows from the omission of the complainant in that respect.

As to the equities in favor of appellant, it is not apparent how he is in a better position than Woodward and Pickering. To say nothing of the broad hints the record gives of these three—Woodward, Noyes and Pickering—constituting a mundane trinity, at the date of the present purchase by Noyes, March 13, 1865, appellee was not only in visible possession but the deed from grantor, Luther Hall, to him was actually of record and was a sufficient legal notice of his claims. (Sec. 30, Ch. 30, Rev. S. Ills., 1874.)

Not only had the parties technical, but also actual notice of the possession of appellee (p. 28). The witness says he met appellant in Boston in January, 1861, before the foreclosure suit was commenced, and in response to inquiry told him appellee was working the farm, had

built a new house, but did not know what he, appellee, intended to do about the mortgage claim.

The last resort of appellant is an invocation of the equity of the Court: First.—On the ground of the delay of the appellee in asking the relief now sought, and Second.—In the possible injustice to be wrought by permitting redemption for so small a sum.

To the charge that appellee has slept upon his equity for these eleven years, he may properly answer that the appellant has been no more swift in enforcing his own rights. The Court has probably observed that men in much better circumstances than this Illinois farmer, are not eager for the luxuries of litigation, even as dispensed by courts of equity; and to apply this experience to the circumstances of the present case, that it can scarcely be considered a neglect, when appellee, during the whole period, had complete and undisturbed enjoyment of proprietorship and bore with it the accompanying responsibilities, improving and paying taxes.

During the eleven years the appellant knew of appellee's occupation, and took no special step to secure his dispossession; further, it was not easy, as the appellee explains, to say from whom he should redeem. In January, 1861, appellant assumed still to own the mortgage. In May, 1861, Woodward foreclosed, and Pickering in October purchased. Immediately after the purchase, Woodward's attorney informs appellee he will not be allowed to redeem. November, 1864, Woodward says the same thing mildly—but assumes to be owner—though Pickering purchased, and from end to end, appellant ap-

pears to have the right of dictation, and finally turns up with formal title, by bond and deed duly recorded.

So far as the possible injury to be wrought on innocently acquired interests, no such injury can be detected. Appellent sold a stallion and took the mortgage to secure payment. And after a variety of dumb-show transactions, turns up with both the stallion and the purchase price, and it is submitted that he is so manifestly the moving factor in the whole proceedings, all so much to his profit, that his prayer for protection is very ungracefully proffered.

Respectfully submitted,

H. D. BEAM,

Of Counsel for Appellee.

1 May term, A. D. 1875.

At a circuit court of the United States for the fifth judicial circuit and middle district of Alabama, begun and holden at Montgomery, Alabama, on the third day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable John Bruce, judge of the United States district court for the middle district of Alabama, sitting as circuit judge; N. S. McAfee, United States district attorney; and Robert W. Healy, United States marshal, by whom the court was duly opened at 12 o'clock m., when the following proceedings were had:

Summons & complaint.

UNITED STATES OF AMERICA:

District court of the United States for the middle district of Alabama.

The President of the United States of America to the marshal of said district, greeting:

2 You are hereby commanded to summon the Mayor and Councilmen of Troy, who is a citizen of the State of Alabama, to appear before the honorable district court aforesaid, at the place of holding said court, at Montgomery, on the fourth Monday of November next, to answer the complaint of Evans, Gardner & Co., who are citizens of the State of New York; and have you then and there this writ.

Witness the honl. Richard Busteed, judge of the said court, the fourth Monday of May, A. D. 1872. Issued the 31st day of October, A. D. 1872.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. District Co., Mid. Dist. Ala.

Complaint.

UNITED STATES OF AMERICA:

In the district court of the United States for the middle district of Alabama, November term, 1872.

James W. Evans, Richard Gardner, William B. Milton, and W. R. Hutcheson, who are citizens of the State of New York, and who are doing business together as partners and merchants under the name and style of Evans, Gardner & Co., in the city and State of New York, claim twenty thousand dollars as damages of the Mayor and
3 Councilmen of Troy, a corporation duly incorporated under and by virtue of the laws of Alabama, and treated as such, which said corporation is a citizen of the State of Alabama and of the district aforesaid.

For that, whereas, heretofore, to wit, during the year 1868, the town of Troy, being a municipal corporation, under and by virtue of the laws of the State of Alabama, and being a citizen of said State of Alabama and district aforesaid, was duly authorized by two acts of the general assembly of the State of Alabama, the one entitled "An act to incorporate Troy, in the county of Pike, and to authorize said corporation to levy a tax to pay for stock subscribed by them in the Mobile & Girard Railroad," approved October 8th, A. D. 1868, and the other entitled

"An act supplemental to an act to incorporate the town of Troy, in the county of Pike, and to authorize said municipal corporation to levy a tax for a subscription to the capital stock of the Mobile & Girard Railroad Company," approved December 8th, A. D. 1868, to order an election for the purpose of ascertaining the sense of the owners of the real estate in the said town of Troy upon the question of subscription
4 to the capital stock of the Mobile & Girard Railroad Company, for the purpose of extending said railroad to Troy, Alabama, and, upon the election resulting in favor of subscription as aforesaid, empowering the said corporation to issue bonds of said town of Troy, not to exceed in amount seventy-five thousand dollars; and further, to levy a tax upon the real estate of said town, to be collected annually, for the payment of said bonds.

That said election was duly ordered by the intendent and councilmen of said town of Troy on the third day of December, A. D. 1868, and was held on the seventeenth day of December, A. D. 1868, in pursuance of said order, and in strict compliance with the terms and requirements of the same and of the acts of the general assembly of the State of Alabama aforesaid, and resulted in favor of subscription to the capital stock of said railroad company for the purpose of extending the said road to Troy.

That on the 22d day of December, 1868, the intendant and councilmen of the said town of Troy did duly authorize the issuance of bonds of said town to the amount of fifty thousand dollars, for the extension of
5 the said Mobile and Girard Railroad from the point of deflection above Faulk's bridge, on Conecah River, to the said town of Troy, said bonds to draw eight per cent. interest from date, and to be paid in ten annual installments of not more than ten per cent. of the principal and interest thereon in any one year's payments, to commence at the date of the completion of said railroad to Troy.

That on the 13th day of January, A. D. 1869, the intendent and councilmen of the said town of Troy, under and by virtue of the authority aforesaid, did issue, to wit, fifty-seven bonds of the said town of Troy, each of which being in substance as follows:

UNITED STATES OF AMERICA—THE STATE OF ALABAMA.

No. .] *Bond of the town of Troy.* [$100.

Whereas the general assembly of the State of Alabama, in the year 1868, did pass two several acts, which were duly approved by his excellency the governor of said State, authorizing the town council of the town of Troy, Alabama, to order an election for the purpose of ascertaining the sense of the owners of real estate in the said town
6 of Troy upon the question of subscription to the capital stock of the Mobile & Girard Railroad Company for the purpose of extending said railroad to Troy, Alabama; and upon the election resulting in favor of subscription as aforesaid, empowering the said corporate authorities to issue bonds of the said town of Troy, not to exceed in amount seventy-five thousand dollars; and further, to levy a tax upon the real estate of said town, to be collected annually, for the payment of said bonds; and

Whereas said election was ordered by the council of said town of Troy, on the third day of December, A. D. 1868, and was held in pursuance of said order on the 17th day of December, A. D. 1868, and resulted unanimously in favor of subscription to the capitol stock of said railroad

company for the purpose of extending the said road to Troy, Alabama; and

Whereas, on the 22d day of December, A. D. 1868, the intendent and councilmen of the town of Troy, Alabama, did authorize the issuance of bonds of said town to the amount of fifty thousand dollars, for the extension of the said Mobile & Girard Railroad from the point of deflec-
7 tion above Faulk's bridge, on Conecah River, to the said town of Troy, said bonds to draw eight per cent. interest from date, and to be paid in ten annual installments of not more than ten per cent. of the principal and interest thereon in any one year, payments to commence at the date of the completion of said railroad to Troy, Alabama:

Now, know all men by these presents, that the intendent and councilmen of the town of Troy, Alabama, acknowledge to owe the bearer hereof the sum of one hundred dollars, with interest at eight per cent. per annum from the date hereof, which sum they hereby promise, for themselves and their successors, to pay in ten annual installments, together with the interest that may have accrued thereon, on demand, after the completion of the Mobile & Girard Railroad to the said town of Troy, Alabama; payments to be made at the office of the treasurer of the town of Troy, Alabama.

In witness whereof the intendent and treasurer of the town of Troy have hereunto set their hands and affixed the seal of the corporation of the said town of Troy, Alabama, this 13th day of January, 1869.

U. S. JONES, *Intendent.*
D. B. MURPHREE, *Treasurer.*

[TOWN COUNCIL TROY, ALABAMA.]

8 Plaintiffs further aver that after said 13th day of January, 1869, to wit, on the 17th day of February, 1870, the inhabitants of said town of Troy were incorporated, under and by virtue of an act of the general assembly of the State of Alabama, entitled "An act to establish a charter for the city of Troy, in Pike County," approved by his excellency the governor of Alabama on said 17th day of February, A. D. 1870, and made a body-politic by the name of the mayor and councilmen of Troy, the defendant; that under and by virtue of said last-mentioned act, the defendant, under the name and style of the mayor and councilmen of Troy, became liable for the payment of the principal and interest of said bonds above described, in the manner therein stipulated, and said bonds were made valid and binding on the defendant; that said act of the general assembly of the State of Alabama last above mentioned was accepted by the inhabitants of the said town of Troy, and they duly organized thereunder and became a municipal corporation and body-politic.

Plaintiffs further aver that fifty-seven of said bonds, numbered
9 as follows, from number 164 to number 217, both inclusive, and from number 276 to *to* 278, both inclusive, are the property of plaintiffs; that said Mobile and Girard Railroad was completed and in running order and the cars running to the said town of Troy, to wit, on the 9th day of June, A. D. 1870, and that three annual installments are due on each of said bonds, said installments being ten per cent. each of the principal of said bonds, and amounting to the aggregate sum of thirty dollars on each of said bonds; and that eight per cent. interest from the date of said bonds, to wit, from the 13th day of January, A. D. 1869, is due on said installments.

Plaintiffs further aver that demand was duly made on defendant for payment of the installments due on said bonds as aforesaid, with inter-

est as aforesaid, after the completion of the said Mobile and Girard Railroad to said town of Troy, and the road was in running order, and the cars running to Troy, and before the commencement of this action, at the office of the treasurer of the defendant, and payment was thereof refused, and the same is unpaid; wherefore plaintiffs bring this suit and
10 claims the sum of seventeen hundred and ten dollars, the amount of the installments due thereon, with interest at of eight per cent. per annum from said 13th day of January, A. D. 1869, on said bonds.

2 count.

The plaintiffs, James W. Evans, Richard Gardner, William B. Milton, and W. R. Hutcheson, who are citizens of the State of New York, and who are doing business together as partners and merchants under the name and style of Evans, Gardner & Co., in the city and State of New York, claim the further sum of twenty thousand dollars as damages of the Mayor and Councilmen of Troy, a corporation duly incorporated under and by virtue of the laws of the State of Alabama, which said corporation is a citizen of the State of Alabama and the district aforesaid.

For that whereas heretofore, to wit, during the year 1868, the town of Troy, being a municipal corporation, under and by virtue of the laws of the State of Alabama, and being a citizen of the State of Alabama and of the district aforesaid, was duly authorized by the several acts of the general assembly of the State of Alabama, the one entitled "An act to incorporate Troy, in the county of Pike, and to authorize said corporation to levy a tax to pay for stock subscribed by them in the
11 Mobile and Girard Railroad," approved by his excellency the governor of Alabama on the 8th day of October, A. D. 1868, and the other entitled "An act supplemental to the act to incorporate the town of Troy, in the county of Pike, and to authorize said municipal corporation to levy a tax for a subscription to the capital stock of the Mobile and Girard Railroad Company," approved by his excellency the governor of Alabama on the 8th day of December, A. D. 1868, to order an election for the purpose of ascertaining the sense of the owners of the real estate in the said town of Troy upon the question of subscription to the capital stock of the Mobile and Girard Railroad Company for the purpose of extending said railroad to Troy, Alabama, and, upon the election resulting in favor of subscription as aforesaid, empowering the said corporation to issue bonds of said town of Troy, not to exceed in amount seventy-five thousand dollars; and further, to levy a tax upon the real estate of said town, to be collected annually, for the payment of said bonds.

That said election was duly ordered by the council of said town of Troy on the third day of December, A. D. 1868, and was held on the 17th day of December, A. D. 1868, in pursuance of said order, and in
12 strict compliance with the terms and requirements of the same, and of the acts of the general assembly of the State of Alabama, and resulted in favor of subscription to the capital stock of said railroad company for the purpose of extending the said road to Troy.

That, on the 22d of December, A. D. 1868, the intendant and councilmen of the said town of Troy did duly authorize the issuance of bonds of said town to the amount of fifty thousand dollars for the extension of the said Mobile and Girard Railroad from the point of deflection above Faulk's bridge, on Conecah River, to the said town of Troy, said bonds to draw eight per cent. interest from date, and to be paid in ten annual

installments of not more than ten per cent. of the principal and interest thereon in any one year, payments to commence at the date of the completion of said railroad to Troy; and on the 16th day of February, A. D. 1869, the intendant and councilmen of the said town of Troy did duly authorize the issuance of bonds of said town to the additional amount of fifteen thousand, dollars for the same purpose, payable in the same manner, and at the same rate of interest.

13 That, on the 19th day of February, 1869, the intendant and councilmen of the said town of Troy, under and by virtue of the authority aforesaid, did duly issue, to wit, sixty-three bonds of the said town of Troy, each of which being in substance as follows:

UNITED STATES OF AMERICA—THE STATE OF ALABAMA.

No. .] *Bond of the town of Troy.* [$100.

Whereas the general assembly of the State of Alabama, in the year 1868, did pass two several acts, which were duly approved by his excellency the governor of said State, authorizing the town council of the town of Troy, Alabama, to order an election for the purpose of ascertaining the sense of the owners of real estate in the said town of Troy upon the question of subscription to the capital stock of the Mobile & Girard Railroad Company for the purpose of extending said railroad to Troy, Alabama, and, upon the election resulting in favor of subscription, as aforesaid, empowering the said corporate authorities to issue bonds of said town of Troy, not to exceed in amount seventy-five thou-

14 sand dollars, and, further, to levy a tax upon the real estate of said town, to be collected annually, for the payment of said bonds; and

Whereas said election was ordered by the council of the said town of Troy on the third day of December, A. D. 1868, and was held in pursuance of said order on the 17th day of December, 1868, and resulted unanimously in favor of subscription to the capital stock of said railroad company for the purpose of extending said road to Troy, Alabama; and

Whereas, on the 22d day of December, 1868, the intendant and councilmen of the said town of Troy, Alabama, did authorize the issuance of bonds of said town to the amount of fifty thousand dollars, and on the 16th day of February, 1869, did authorize the issuance of said bonds to an additional amount of fifteen thousand dollars, for the extension of the said Mobile and Girard Railroad from the point of deflection above Faulk's bridge, on Conecah River, to the said town of Troy, said bonds draw eight per cent. interest from date, and to be paid in ten annual installments of not more than ten per cent. of the principal and interest thereon in any one year, payments to commerce at the date of the

15 completion of said railroad to Troy, Alabama: Now, know all men by these presents that the intendant and councilmen of the town of Troy, Alabama, acknowledge to owe the bearer hereof the sum of one hundred dollars, with interest at eight per cent. per annum from the date hereof, which sum they hereby promise, for themselves and their successors, to pay in ten annual installments, together with the interest that may have accrued thereon, on demand, after the completion of the Mobile and Girard Railroad to the said town of Troy, Alabama.

Payments to be made at the office of the treasurer of the town of Troy, Alabama.

In witness whereof the intendant and treasurer of the town of Troy

have hereunto set their hands and affixed the seal of the corporation of the said town of Troy, Alabama, this 19th day of February, A. D. 1869.

U. S. JONES,
Intendant.

[TOWN COUNCIL TROY, ALABAMA.] D. B. MURPHREE,
Treasurer.

Plaintiffs further aver that after said 19th day of February, 1869, to wit, on the 17th day of February, 1870, the inhabitants of said town of Troy were incorporated under and by virtue of an act of the gen-
16 eral assembly of the State of Alabama, entitled "An act to establish a charter for the city of Troy, in Pike county," approved by his excellency the governor of Alabama on said 17th day of February, 1870, and made a body-politic by the name of the "Mayor and Councilmen of Troy," the defendant.

That under and by virtue of said last mentioned act the defendant, under the name and style of the Mayor and Councilmen of Troy, became liable for the payment of the principal and interest of said bonds above described in the manner therein stipulated, and said bonds were made valid and binding on the defendant.

That said act of the general assembly of the State of Alabama last above mentioned was accepted by the inhabitants of the said town of Troy, and they duly organized themselves and became a municipal corporation and body-politic.

Plaintiffs further aver that sixty-three of said bonds, numbered 570 to number 617, both inclusive, and from number 633 to *to* number 647, both inclusive, are the property of plaintiffs; that said Mobile and Girard Railroad was completed and in running order, and the cars running to the said town of Troy, to wit, on the 9th day of June, 1870, and that three annual installments are due on each of said bonds, said install-
17 ments being ten per cent. each of the principal of said bonds, and amounting to the aggregate sum of thirty dollars on each of said bonds, and that eight per cent. interest from the date of said bonds, to wit, from the 19th day of February, 1869, is due on said installments.

Plaintiffs further aver that demand was duly made by them on the defendant for payment of the installments due *due* on said bonds as aforesaid, with interest as aforesaid, after the completion of the Mobile and Girard Railroad to said town of Troy, and after said railroad was in running order, and the cars were running to said Troy, and before the commencement of this suit, at the office of the treasurer of said mayor and councilmen of Troy, and payment thereof was refused, and the same is yet unpaid.

Wherefore plaintiffs bring this suit, and claim the sum of eighteen hundred and ninety dollars of defendant, the amount of installments due on said bonds, with interest on said bonds at eight per cent. per annum from said 19th day of February, 1869.

STONE & CLOPTON,
Att'ys for Pl'ffs.

We acknowledge ourselves security for costs in this suit.
STONE & CLOPTON.

18 Received in office this 31 day of October, 1872.
R. W. HEALY,
U. S. Marshal.

Executed by serving a copy of the within summons & complaint on the defendant, N. W. Griffin, mayor of the city of Troy, Pike County, Alabama, this the 4th day of Nov'r, 1872.

R. W. HEALY,
U. S. Marshal,
By H. R. LYONS,
Dep'ty.

Received and filed April 15th, A. D. 1873.

N. W. TRIMBLE,
Clerk.

Demurrers to complaint.

United States district court for the middle district of Alabama, sitting at Montgomery.

JAMES W. EVANS, RICHARD GARDNER, W'M B. Milton, W. R. Hutcheson, merchants & partners, under the firm-name of Evans, Gardner & Co., pl'ffs,
vs.
THE MAYOR & COUNCILMEN OF TROY, defendants.

And the said defendant, by Rice, Jones & Wiley, its attorneys, comes and defends the wrong and injury when, &c., and says that the first count of said declaration and the matter therein contained, in manner and form as the same are above stated and set forth, are not sufficient for said plaintiffs to have or maintain their aforesaid action
19 thereof against the defendant, and that defendant is not bound by law to answer the same. And the said "The Mayor and Councilmen of Troy," defendant, according to the form of the statute in such cases made and provided, states and shows to the court here the following causes of demurrer to the said first count of said declaration, that is to say:

1st. Said first count of said complaint discloses no substantial cause of action in favor of the plaintiffs against the defendants.

2. That the bond or instrument set forth and declared on in said first count is not a commercial instrument, and said first count discloses no fact or facts which authorize or entitle the plaintiffs to recover of defendant upon said instrument set forth in said first count.

3. That no fact or facts are stated in said first count which entitle the plaintiffs to any recovery under said first count.

4th. That said first count does not aver or state as a fact that any demand was ever made of defendant after the completion of said railroad mentioned in said first count to Troy.

20 4*t*. That there is no legal averment of any demand made upon defendant after the completion of said railroad mentioned in said first count to Troy, what is stated as to a demand in said first count being a mere conclusion of law of the plaintiffs.

5th. That the instrument declared on in said first count was issued without authority of law and contrary to law, and without any authority whatever.

6th. That the intendant and council of the town of Troy had no authority to issue the instrument set forth and declared on in said first count, or to make the corporation sued in this action liable upon said instrument, or for any part thereof.

6th. That the instrument set forth and declared on in said first count is not and does not purport to be payable on any event which was certain to happen, but only on an event which might never happen; and said first count discloses no facts which authorize the plaintiffs to recover or sue upon said instrument in this action.

21 And the said defendant, as to the second count of the plaintiffs' complaint, says that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law for said plaintiffs to have or maintain their aforesaid action thereof against defendant, and that defendant is not bound to answer the same.

And said defendant, according to the form of the statute in such cases made and provided, states and shows to the court here the following grounds of demurrer, that is to say:

1st. That said second count contains no substantial cause of action in favor of plaintiffs against defendant.

2nd. That the bond or instrument set forth and declared on in said second count is not a commercial instrument, and said second count discloses no fact or facts which authorize or entitle plaintiffs to recover upon said instrument so set forth and declared on in said second count.

22 3rd. That no fact or facts are stated in said second count which entitle plaintiffs to any recovery under said second counts.

4th. That said second count does not aver or state as a fact that any demand was ever made of defendant, after the completion of said railroad mentioned in said second count, to Troy.

5th. That the instrument declared on said second count was issued without authority of law and contrary to law, and without any authority whatever.

6th. That the intendant and council of the town of Troy had no authority to issue the instrument set forth and described in said second count, or to make the corporation sued in this action liable upon said instrument, or for any part thereof.

7th. That the instrument set forth and declared on in said second count is not and does not purport to be payable on any event

23 which was certain to happen, but only on an event which might never happen; and said second count discloses no facts which authorize the plaintiffs to sue upon and recover on said instrument.

RICE, JONES & WILEY,
Att'ys for Def't.

It is admitted and agreed that each of the within demurrers was overruled by the judgment of the circuit court of the United States at Mobile, Alabama, made and rendered in this case while the case was pending in that court, and the same may be entered of record in this case in this court, and the defendant is to have the same benefit as if said judgeme't overruling each of said demurrers had been made and rendered in this court, May 2 >th, 1875.

STONE & CLOPTON,
Att'ys for Pl'ffs.
RICE, JONES & WILEY,
Att'ys for Def'ts.

Filed 10th February, A. D. 1873.

E. C. V. BLAKE, *Clerk.*

Received & filed April 15, 1873.

N. W. TRIMBLE, *Clerk.*

24 *Transcript from U. States district court.*

May term, 1872.

At a district court of the United States for the middle district of Alabama, begun and holden at Montgomery, Alabama, on the 27th day of May, A. D. 1872.

Present, the honorable Richard Busteed, judge of said court, John A. Minnis, esqr., United States district attorney, and Robert W. Healy, United States marshal, by whom the court was duly opened at 12 o'clock, m., and the following proceedings had:

Trial docket.

Stone & C.

EVANS, GARDNER & CO.
vs.
THE MAYOR & COUNCILMEN OF TROY. } 1850.

Rice, Jones & Wiley.

Executed Febr'ary 10, 1873. Demurrer to complaint filed.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, E. C. V. Blake, clerk of the district court of the United
25 States for the middle district of Alabama, do hereby certify that the foregoing copy, paged one, is a full, true, and complete transcript of all the dockets, minutes, orders, and decrees in the cause therein stated, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at Montgomery, in said district, this 12th day of April, A. D. 1873.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. Dist. Co'rt, Mid. Dist. Ala.

Received and filed April 15th, 1873.

N. W. TRIMBLE, *Clerk.*

Plea of defendant.

Pending in the circuit court of the United States at Mobile, in the State of Alabama.

EVANS, GARDNER & CO.
vs.
THE MAYOR & COUNCILMEN OF TROY.

And now comes the said defendant, The Mayor & Councilmen of Troy, by its attorneys, Rice, Jones & Wiley, and defends the wrong and injury wh'n, &c., and for plea to said complaint says that the plaintiffs,
26 at the commencement of this suit, were not the parties really interested in the within instruments sued on and set forth in said complaint, and were not at the commencement of this suit the real owners of said written instruments.

That at the commencement of this suit U. L. Jones was a citizen and

resident of the State of Alabama, and really interested in said written instruments.

That at the commencement of this suit the plaintiffs held said instruments as security for another existing liability or indebtedness of said U. L. Jones to the plaintiffs, which was much smaller in amount than the amount of said written instruments, and which was neither paid nor extinguished by said written instruments, nor by their delivery to plaintiffs by said Jones.

That the plaintiffs obtained said written instruments from the said Jones, before the commencement of this suit, as security for the said liability or indebtedness of said Jones to them, and held the same as such security at the commencement of this suit, and not otherwise; and that when plaintiffs so obtained said written instruments from said Jones, plaintiffs had notice that said Jones was a resident citizen of the State of Alabama, as in fact he then was, and ever since has been.

27 And this the said defendant is ready to verify.

Wherefore the defendant prays judgment, &c.

RICE, JONES & WILEY,
Att'ys for Def't.

THE STATE OF ALABAMA,
Montgomery County:

J. S. Solomon, agent of the defendant in the above entitled cause, and one of the councilmen of Troy, states, on oath, that he is duly authorized by the said defendant to verify by affidavit the foregoing plea; that he is, and for two years last past has been, one of the councilmen of Troy; that on the 30th day of January, 1874, the mayor & councilmen of Troy, at a meeting held on that day, adopted the resolution shown in Exhibit A, hereto attached, as part hereof; and the mayor of Troy, under said resolution, appointed affiant as shown in said exhibit; that the foregoing plea is true in substance and fact.

J. S. SOLOMON.

Sworn to & subscribed before me this 31' day of January, 1874.

JNO. W. WATTS,
U. S. Commissioner Middle Dist. Ala.

28 EXHIBIT A.

At a meeting of the mayor & councilmen of Troy, held January 30th, 1874, the following preamble and resolution was adopted.

Whereas the mayor & councilmen of Troy have been advised by their attorneys, Mess'rs Rice, Jones & Wiley, that in case of "Evans, Gardner & Co. vs. The Mayor and Councilmen of Troy" it is necessary to the successful defense of said suit that other pleas be filed in said cause, properly verified as required by law: Therefore,

Be it resolved by the mayor & councilmen of Troy, That his honor the mayor be requested, and is hereby authorized, to appoint a committee of one, from the city council of Troy, to go to Montgom'y to make, prepare, and verify said pleas, and do all other things in relation thereto as may be suggested as necessary by the said attorneys, Mess'rs Rice, Jones & Wiley.

Whereupon his honor the mayor appointed Councilman J. S. Solomon to constitute said committee.

I hereby certify that the above is a true copy of the preamble and resolution as appears from the minutes of the proceedings of the mayor and councilmen of Troy.

L. H. BOWLES,
City Clerk.

Filed Febru'y 2nd, 1874.

N. W. TRIMBLE, *Clerk.*

29 May term, A. D. 1875.

At a circuit court of the United States for the 5th judicial circuit and middle district of Alabama, begun and holden at Montgomery, Alabama, on the third day of May, A. D. 1875.

Present, the Hon. John Bruce, judge of the United States district court for the middle district of Alabama, sitting as circuit judge; N. S. McAfee, esq'r, United States district attorney, and Robert W. Healey, United States marshal, by whom the court was duly opened at 12 o'clock m., when the following proceedings were had:

30 *Judgment.*

TUESDAY, *May 27th, A. D.* 1875.

EVANS, GARNER & CO.
vs.
THE MAYOR AND COUNCILMEN OF TROY.

Came the parties by their attorneys, and pending the trial the plaintiffs moved the court for leave to amend the complaint by striking out the first count thereof, which motion the court granted and allowed the plaintiffs to strike out said first count, which was done.

And the plaintiffs thereupon withdrew from the jury the fifty-seven bonds described in the said first count of the complaint, with the exception that at the instance and motion of defendant the said fifty-seven bonds are allowed to remain before the jury as evidence on the trial of the issues formed on the second count of the complaint.

And on motion and by consent the several rulings of the court in this cause on demurrers had and of record while this cause was pend-
31 ing in the circuit court of the United States for the southern district of Alabama, be certified to this court and made part of the record in this cause.

And thereupon came a jury of twelve good and lawful men, to wit, J. E. Marshall and eleven others, who being duly elected, tried, and sworn well and truly to try the issues joined between the parties, on their oaths do say that they find for the plaintiffs and assess their damages at thirty-nine hundred and twenty-six & $\frac{88}{100}$ dollars.

It is therefore considered by the court that the said plaintiffs recover of the said defendant the said sum of thirty-nine hundred and twenty-six & $\frac{88}{100}$ dollars and the costs in this behalf sustained, for which let execution issue.

Motion for new trial denied.

JULY 20TH, 1875.

EVANS, GARDNER & CO.
vs.
TOWN & COUNCIL OF TROY.

This cause coming on to be heard on motion of defendant for a new

trial, after argument and due consideration by the court, the motion was denied.

32 *Agreement of counsel.*

In circuit court of United States, middle district of Alabama.

EVANS, GARDNER & CO.
vs.
MAYOR & COUNCILMEN OF TROY.

Agreed in this cause that the court or presiding justices may sign and seal a bill of exceptions in this cause at any time within thirty days after the adjournment of this term of the court.

May 29th, 1875.

STONE & CLOPTON,
Att'ys for Pl'ffs.

Second agreement of counsel.

In the United States circuit court for the middle district of Alabama.

EVANS, GARDNER & CO.
vs.
THE TOWN OF TROY.

It is hereby understood and agreed that the bill of exceptions for the defendant may be signed by either Judge Bruce or Judge Bradley in vacation and after the adjournment of the present June term, 1875, of the said circuit court of the United States, and shall have the
33 same force and effect as if signed and sealed by both Judges Bradley & Bruce in term-time, provided said bill of exceptions shall be signed by the 1st day of November, 1875.

July 21st, 1875.

STONE & CLOPTON,
Att'ys for Pl'ffs.

Third agreement of counsel.

In the circuit court of the United States for the middle district of Alabama.

EVANS, GARDNER & CO.
vs.
THE MAYOR & COUNCILMEN OF TROY.

In the above-named case it is hereby understood and agreed that the defendants shall have until the next term of said court in which to prepare and present their bill of exceptions; and it is further agreed that said bill of exceptions shall be duly signed in vacation, &c., as if the same was tendered to, and signed & sealed by, the presiding judge in term time, & shall have the same force and effect as if signed by him in term time.

December 10th, 1875.

STONE & CLOPTON,
For Pl'ffs.
RICE, JONES & WILEY,
For Defendants.

34 *Bill of exceptions.*

Circuit court of the United States for the middle district of Alabama, at Montgomery, Alabama. Spring term, 1875.

EVANS, GARDNER & CO.
vs.
THE MAYOR & COUNCILMEN OF TROY.

Be it remembered that when this case was called for trial at the said Spring term, 1875, of said circuit court of the United States for the middle district of Alabama it was suggested, and admitted and agreed in open court by the attorneys of the respective parties, that, whilst this suit was regularly pending in the circuit court of the United States for the southern district of Alabama, a demurrer was duly filed in that court to each count of the complaint, and that all grounds of demurrer which could be legally stated for each of said demurrers were
35 duly specified and set forth in each of said demurrers, and that each of said demurrers, and the grounds of each, were overruled by said last mentioned circuit court at its next term, before this cause was transferred from that court to this court, and that the clerk of that court had omitted to certify to this court the said demurrers, the grounds thereof, the said overruling thereof, and the minute entry showing such overruling of each of said demurrers; and that each of said demurrers as well as the grounds thereof, and the said overruling thereof, should be deemed and taken as of record in this court notwithstanding said omission of said clerk to certify the same to this court; and that the defendant should have the same benefit from each of said demurrers and the grounds thereof, and from the said overruling of each of said demurrers, as if each of said demurrers and said grounds thereof and the said overruling of each of said demurrers and of said grounds of demurrer appeared duly of record in each of said courts.

Under and subject to the foregoing agreements issues were joined
36 on the pleas in bar filed by defendant, and then a jury was empaneled to try the issues joined.

On the trial of said cause the plaintiffs read in evidence the one hundred and twenty bonds mentioned and described in their complaint, and also read in evidence the several acts of the general assembly of Alabama in reference to the matters in controversy and mentioned in their said complaint, and said acts of said general assembly as they are published in the pamphlet acts of said general assembly of said State are by the consent of the parties and of the court, here now given and made in open court, to be deemed and taken as parts and parcels of this bill of exceptions and of the record without being herein copied, and to all intents and purposes as if herein fully copied and set forth; and said plaintiffs also proved that the Mobile and Girard Railroad is a corporation duly created and organized under and by virtue of the laws of said State of Alabama, and that said railroad was completed and the cars running thereon from "Faulks Bridge on the line of deflection" to the said
37 town of Troy on the 9th day of June, A. D. 1870, and plaintiffs also proved that before this suit was brought they demanded the installments and interest herein sued for of the treasurer of said town of Troy at his office.

Plaintiffs then read in evidence the published statements of the State of Alabama as follows, to wit:

"To provide for proper and equitable distribution of stock in the

Mobile and Girard Railroad among the tax-payers of the town of Troy," approved December 15th, 1869.

"To legalize and make valid the acts of the corporate authorities of the town of Troy in subscribing to the capital stock of the Mobile and Girard Railroad, and issuing bonds for the payment thereof," approved January 20th, 1870.

"To provide for the payment of the bonds of the town of Troy by the real estate owners of said town," approved January 20, 1870.

And sections 22, 29, and 30 of an act "to establish a charter for the city of Troy, in Pike County," approved February 17th, 1870.

The plaintiff then closed.

38 The defendant then read in evidence the written statement of Arthur Bingham, former treasurer of said State of Alabama, which was admitted and agreed to by plaintiffs as the sworn testimony or deposition of said Bingham, which said written statement is hereto attached, marked "Exhibit A," and made part of this bill of exceptions.

Defendant next read in evidence a duly certified and duly authenticated copy of all and everything that the books of said municipal corporation, or the council of said town or city of Troy, show was ever done by the said council of the town or city of Troy or by the corporate authorities thereof in relation to the matters in controversy in this cause, which said duly certified and duly authenticated copy is hereto attached, marked "Exhibit B," and made a part of this bill of exceptions.

Defendant also read in evidence a written memorandum of
39 agreement, dated New York, September 26th, 1872, and signed and executed by plaintiffs and one U. L. Jones, which said agreement is also attached hereto and made a part of this bill of exceptions, and marked "Exhibit C."

Defendant next introduced the said U. L. Jones, who, having been first duly sworn as a witness, testified that he was intendant of the said town of Troy when the bonds read in evidence and mentioned and described in plaintiffs' said complaint were authorized and issued by the corporate authorities of said town, and that he signed his own name as intendant of said town to all of said bonds; that his brother-in-law, one Daniel B. Murphree, also signed all of said bonds as the treasurer of said town, and that said bonds here sued on are part and parcel of a series of sixty-five thousand dollars of said bonds, of one hundred dollars each, issued by said corporate authorities of Troy as aforesaid, and signed by himself as town intendant and by said Daniel B. Murphree, town treasurer, as aforesaid.

40 That on the 17th day of December, A. D. 1868, a majority of the voters, real estate owners, in Troy voted in favor of a subscription to the capital stock of the Mobile and Girard Railroad Company.

That prior to the late war the said Mobile and Girard Railroad had been graded on the line of the original survey to what is known and called the "Orion Crossing," on the west side of the Conecah River.

That said "Orion Crossing" is about three miles from said town of Troy, and about four miles from what is known and called "Faulks Bridge," which said bridge is at a distance of about four and a half miles from the said town or city of Troy, while a marshy or hilly country lies between said bridge and the town or city of Troy, which town or city is situated on the east side of the Conecah—the river above-named.

That witness was a large real estate holder and owner in said town

or city, and that he, together with the most prominent and influential citizens of Troy, very much desired that said railroad should deflect from the line originally surveyed at "Faulks Bridge" and run to Troy.

41 That if said railroad went to the right of Troy on the line as originally surveyed to the "Orion Crossing," as aforesaid, that the real property in Troy would have been greatly depreciated in value, and that the completion of said railroad to said town has increased the value of real estate in Troy at least three or four fold.

That the estimated cost of grading said railroad and laying the track from "Faulks Bridge," aforesaid, to the said "Orion Crossing," would be between twenty and twenty-five thousand dollars.

That a majority of real estate owners of Troy had voted in favor of subscription to the capital stock of the Mobile and Girard Railroad Company, as aforesaid.

He, the said Jones, as town intendant, was instructed by the said town council to contract with the officials of the Mobile and Girard Railroad Company, and thereby procure the deflection of said railroad at "Faulks Bridge" as point of deflection, and to procure the said railroad to be brought to Troy.

In addition to said subscription of $65,000.00 by the town of Troy, there was a subscription of ten or twelve thousand dollars by in-

42 dividuals who reside in Pike County, which had been procured for the same purpose of having the railroad carried to Troy, and which was called the country subscription.

This witness, the said U. L. Jones, was entrusted by the town council of Troy with the country subscription aforesaid, and with fifty thousand dollars—the first issued of said Troy bonds—and authorized by said town council to make a contract with said railroad, by which he would procure the deflection and bring the railroad to Troy.

Said Jones made the effort with the board of directors of the Mobile and Girard Railroad Company as aforesaid; but the railroad officials refused to make the trade, refused to receive the country subscription or Troy bonds, or any amount of such bonds or subscription, in payment of such work, and refused on such consideration to deflect their line from that surveyed as aforesaid to "Orion Crossing," or to take the road to Troy.

The said railroad officials, however, made this proposition to said witness, Jones, and through him to the town council of Troy, to wit:

That if said town council would procure a contractor, who

43 would give bond satisfactory to the railroad that he would do and complete the grading, trestling, and bridging, ready for the superstructure on the proposed line of deflection near Faulks Bridge to the town of Troy, then the railroad would pay to such contractor, towards his compensation for such work, a sum equal to the amount it would cost the railroad to complete the grading, trestling, and bridging, ready for the superstructure from the point of deflection near Faulks Bridge to the Orion Crossing, on the route originally surveyed and established, and in addition would give to such contractor for the use of the said tax-payers of Troy, and said country subscribers, an amount of the capital stock of the Mobile and Girard Railroad equal to the amount of Troy bonds used in the construction.

Said Jones further testified that under this offer of the railroad he visited Homer Blackman, a railroad contractor, and sought to induce him to undertake the contract on the said terms proposed by the Mobile and Girard Railroad, and for the further compensation of the said

country subscription, and fifty thousand dollars of the Troy bonds,
44 and that he urged said Blackman to take the contract on these terms.

After examining the proposed route and the engineer's estimates (which had been previously made), said Blackman declined to accept the offer.

Blackman then proposed that if the said intendant and councilmen of Troy would increase the issue of their said bonds to sixty-five thousand dollars ($65,000.00), and give them to him, together with the country subscription aforesaid, and if the land-holders of Troy would convert into cash for him, at par, $25,000.00 of the bonds, he would undertake the work.

Blackman was unwilling to take the contract unless Jones or some other good man or men would go into said contract with him as a partner or partners and aid him in the work, and expressed a preference for said Jones or Jones' *or Jones'* mercantile partner, one Joel D. Murphree, also a brother-in-law of said witness, and at that time also one of the councilmen of Troy.

Jones testified that he desired Blackman to undertake the work without him, and that he (Jones) did not desire to go into the contract.

This proposition of Blackman, fixing the price in bonds and
45 country subscription at which he would undertake the work, was then communicated to the town council of Troy, was agreed to by them, and they accepted and agreed to the further issue of fifteen thousand dollars of bonds to Blackman if he would undertake and do the work for such bonds, the country subscription, and the sum agreed to be paid by the Mobile and Girard Railroad Company above set forth.

That said Blackman and Jones thereupon became partners to do and complete the work, and bring said railroad to the town of Troy, but that said railroad company, or the officials of said railroad company, did not know of any agreement, understanding, or partnership by and between said Blackman and said Jones to build said railroad to Troy; that said Blackman alone, and seemingly as the sole contractor, accepted the terms hereinbefore mentioned and proposed by said railroad company through said Jones to said town council of Troy, and
46 gave to said railroad company satisfactory bond, as required by said contract, to do the work and bring said railroad to Troy.

That neither Jones nor any other person was *was* known or appeared to be a partner or participator with said Blackman in said contract with said railroad company, and that this said contract was in writing.

In a short time after said Blackman had made said contract with said railroad company, and given a satisfactory bond, as required by said contract, the town council of Troy closed the agreement in form with Blackman, as hereinbefore mentioned and disclosed, and thereupon Blackman concluded a verbal contract with said town council to build said railroad to Troy, but that neither Jones, nor any other person, was known to be or supposed to be a partner or participator with said Blackman in said contract.

That during all this time Jones, in fact, was a partner of Blackman, but that he only became such partner at Blackman's earnest request. That said Joel D. Murphree also participated with and was a partner with them at first in said contract, but after a short while
47 withdrew therefrom. That the work was done under the direction of the railroad company's engineer, and was received by him when the contract, as above proposed, was concluded with said Black-

man; neither the names of said Jones nor Murphree were known in the contract, and that said contract above mentioned, described, and entered into by and between said Blackman and the said town council of Troy was not in writing.

Jones further testified that instead of $25,000.00 of said Troy bonds being converted into cash by the land-holders, only about fifteen thousand dollars of said bonds were so converted, and of the said country subscription only four or five thousand dollars were realized.

This witness also testified that the said Troy bonds were kept by the treasurer in his (witness's) safe, and were paid out from time to time as the work progressed. That he (Jones) would send to Blackman what he considered Blackman's share of the bonds, and retain what he considered his own.

48 That the last division was made after the work was finished in June, 1870, when he (Jones) took to his share the bonds sued on in this case and gave to Blackman other bonds.

There has never been any formal division of said bonds between them, and no transfer in writing from the one partner to the other; that Blackman has never made any complaint about said division, nor set up any claim to the bonds here sued on. No settlement of the said partnership has ever been made or had between Blackman and Jones.

That shortly after the work was finished Blackman turned over to the mayor and councilmen of Troy $75,000.00 of the capital stock of the Mobile and Girard Railroad, $65,000.00 for the real-estate owners (tax payers) of Troy, and $10,000.00 for the country subscribers; that said city authorities still held said $65,000.00 of stock, and the city (Troy having now become a city) is represented to that extent in consequence thereof in the stockholders' meetings of the Mobile and Girard Railroad Company, and casts its votes to that extent in such meetings

49 No actual subscription of stock in favor of the town or city of Troy was ever written down in the books of the Mobile and Girard Railroad Company.

That said railroad was completed and put in running order to Troy on June the 9th, 1870, and that trains have been running to that place making regular trips ever since.

The improvements, value of real estate, amount of trade and population have increased many fold since the completion of the said railroad. Without it the town would have been greatly damaged in trade, the shrinkage in valuation of property, and the consequent decrease of population.

Jones further testified that said contract had made him no profit, but the failure to collect said bonds had almost ruined if not broken him.

The writing in evidence signed and executed by plaintiffs and said U. L. Jones shows the entire terms of the contract by which plaintiffs acquired all the interest they have in said bonds. Under that contract

50 said plaintiff let said Jones have, at the date of the writing, about $3,500 of merchandize, and subsequently (but before this suit was brought) about $700 worth in addition.

Invoices or bills of these goods were forwarded with these goods in the usual way, the same as when goods are ordinarily purchased by retail merchants in the country from wholesale merchants in New York. Witness supposed the goods were charged against him on the books of plaintiffs, and that he (witness) expected to pay for the goods in the event the money was to be realized on said bonds. No demand had ever

been made of him of payment for said goods so purchased from plaintiffs.

He testified that he had been long a merchant; was well known to plaintiffs; that they had confidence in him; did not ask him for collaterals, and that in his opinion they would have sold him goods and given him credit without any transfer of said bonds, and that witness himself had voluntarily proposed to trade said bonds to plaintiffs.

That the said shares of the capital stock of the Mobile and Girard Railroad were not issued or transferred directly by the railroad company to the authorities of the city of Troy. They were delivered
51 by said railroad to Blackman, and after the road was completed to Troy they were turned over by *by* Blackman to the town or city officials of Troy to be kept or used in discharging the said obligations to deliver stock to the tax-payers according to the terms of said statutes.

The defendant next introduced the said Joel D. Murphree, whose testimony was substantially that of the witness, U. L. Jones, last above named, as to all matters to which said Jones testified, except as to said transfer, by said Jones, of the said bonds here sued on to the plaintiffs, and the purchase and sale of the goods and merchandize by and between said Jones and plaintiffs; as to this trade or transaction last mentioned, witness had no personal knowledge.

Said witness Murphree also testified that neither the corporate authorities of Troy nor any of the people of Troy, so far as witness believed or ever heard, except said Jones and himself knew anything of the connection of said Jones and himself with or their participation in said contract heretofore mentioned, and proved as having been
52 entered into by and between said Blackman, Jones, and Murphree, and that, after he retired from said partnership, he (the said witness) was the only councilman of Troy, so far as he knew and believed, that at any time knew anything of the existence of said agreement, or any other arrangement or understanding, by which Jones was let into a participation of said contract to complete said railroad from Faulks Bridge to Troy, and that the people of Troy generally were ignorant of any contract or agreement between said Blackman and Jones for the completion of said railroad to said place.

The witness Murphree also testified that he (Murphree) lost nothing by his connection with the said Blackman and Jones, or from his participation in said contract.

He further testified that since the time it had been secured by contract that said railroad was to be carried to Troy great improvements had been made in that place, the population had quar*trib*led, and the trade had increased tenfold.

Here defendant rested.

53 The plaintiffs then introduced the said Homer Blackman, who testified as to all matters in which he is shown above to have participated, substantially as said Jones testified herein above.

He testified further that when it was proposed that he should take said contract he visited Troy; that after giving the ground proper examination he refused to undertake the job, unless he could obtain some reliable partner in Troy to superintend the work at the business at that end; that he prefer'ed said U. L. Jones for such partner, and at his (Blackman's) instance Jones reluctantly came into the contract.

That he (Blackman), while negotiating the contract, conversed freely with the council and with leading citizens, and that he thought he had told several of them that Jones was to be interested. He testified that he had obtained for his work under the contract somee $25,000.00 from

the Mobile and Girard Railroad Company, four or five thousand dollars on the country subscription, and about fifteen thousand dollars in money into which the bonds were converted by the citizens under their
54 said agreement to so convert $25,000.00 of the Troy bonds; that he had been put to great expense and trouble to raise necessary moneys in consequence of the failure of the citizens of Troy to convert $25,000.00 of the bonds into cash.

He further testified that the work he did under said contract amounted to about $88,000.00, and cost him that sum.

The foregoing was in substance all the evidence adduced on the trial of this cause.

Upon the foregoing evidence, without any more, the plaintiffs' attorney made his opening speech to the jury, and the attorneys of defendant made their speeches to the jury, and the plaintiffs' attorney was making his closing speech to the jury when the presiding judge suggested to the plaintiffs' attorney that, under the complaint as it was, and under the evidence as it was, the plaintiffs could not recover without amending the complaint by reducing the claim of the plaintiffs in the complaint below the sum, or so as not to exceed the sum, which the foregoing evidence showed that said U. L. Jones owed the plaintiffs.
55 Thereupon the attorney of plaintiffs asked leave of the court to amend the complaint by striking out the first count thereof.

The defendants objected to the allowance or making of this amendment as unauthorized by law or by justice.

But the court allowed said amendment of the complaint, and defendant duly excepted to this ruling & decision of the court in allowing the said amendment.

The court declined to allow any of the foregoing evidence to be withdrawn by the plaintiffs.

As soon as this amendment of the complaint was allowed by the court, and excepted to by defendant, the defendant offered a demurrer, and insisted upon the right to offer such demurrer to the complaint as amended, but, at the instance of plaintiffs, the court ruled and decided that the defendant should not interpose a demurrer to the complaint as amended; and to this ruling and decision of the court the defendant duly excepted.

The defendant then offered to plead to the complaint as amended, but the court refused to allow the defendant to plead to the complaint as amended, and decided that the trial must proceed on the amended complaint. And the pleas of defendant which had been already filed
56 before the commencement of the trial, counsel did not state any grounds of demurrer, or any additional pleas he proposed to file, but proposed to do so.

The court remarked that the amendment allowed presented no new facts, and was not such as to render any additional demurrer necessary or proper.

Plaintiff then withdrew from the jury the bonds described in the count of the complaint that was stricken out.

To each of the aforesaid rulings and decisions of the court, as well as to the said refusal of the court, the defendant duly excepted.

The attorney of the plaintiff then finished his closing speech, and the court charged the jury as follows:

57 *Charges or opinion of the court.*

Opinion of the court.

EVANS, GARDNER & CO.,
vs.
THE MAYOR & COUNCILMEN OF TROY.

MAY 27TH, 1875.

The able and ingenious arguments of counsel in this case have required us to bestow particular attention to the several points which have be raised. In its general aspect, the merits of the case cannot easily be mistaken. In 1868, the Mobile and Girard Railroad was being constructed in the vicinity of the then town of Troy, but surveyed route passed to one side of it at a distance of three or four miles. Had the road been constructed on that line, the inhabitants of Troy justly feared that their town would be abandoned, and their property would be comparatively valueless. Hence they were naturally anxious to have the route of the railroad changed so as to bring it to the town.

58 But this involved its construction over a hilly and uneven country, a distance of three or four miles, which would greatly increase expense.

The railroad company were unwilling to incur this increased expense, although willing to contribute what it would cost to construct the railroad on the original route, and it was estimated that the difference would be fifty or sixty thousand dollars. The people and town authorities of Troy were willing to go to this expense if the bonds of the town would be taken for the amount, and if stock of the company to the same amount should be issued therefor to the town.

The railroad company refused to take the bonds of the town, but agreed if they would find a contractor able to give good security to complete the work they would pay the contractor the estimated cost of building the road on the original route, and would issue their stock to the city for the difference caused by the increased expense of construction on the route proposed.

These were the best terms the people of the town could get out of the railroad company, and they seem to have been reasonably fair terms.

Up to this time M'r Jones, the intendant of the town, so far as

59 appears, had represented the town alone, being only privately interested equally with the other property-holders in having the change made if it could possibly be effected.

It now became an object of importance to find a contractor who would be willing to do the work and take the city bonds and the proportion of money to come from the railroad company. Such a man was found in M'r Blackman, an experienced railroad contractor, who was applied to, and who, as he testified, had interviews with the town council and other citizens on the subject.

But after examining the route and the work to be done, he was unwilling to do it for the amount first proposed. Instead of fifty thousand dollars, he insisted that it could not be done for less than seventy-five thousand dollars, in addition to what the railroad company would have to pay, which was estimated at about twenty-five thousand dollars; and he proposed to undertake the work if the town would give him sixty-five thousand dollars in its bonds, and would turn over to him the country subscriptions (as they were called, being small subscriptions along the line), which were estimated at about ten thousand dollars. This was finally agreed to.

60 M'r Blackman then entered into contract with the railroad company, by which he agreed to build the road for the estimated amount it would cost to build it on the original route, and for sixty-five thousand in the stock of the company, in addition.

The fact that the railroad company acceded to these terms shows that they could not have been deemed unreasonable or unfair. I do not recollect, but I suppose that stock was also to be issued for the country subscriptions. The jury will remember what the evidence was on that point.

During M'r Blackman's negotiations with the town of Troy, he made several subsidiary stipulations which he deemed important to enable him to carry the thing out. One was that some one or more of the towns-people should join him in shouldering the responsibility of the undertaking, and in assisting to look after the work, as he lived some twenty miles distant, and he selected M'r Jones for this purpose, who, it seems, if I recollect the evidence correctly, reluctantly gave his assent and took an equal interest with Blackman.

61 Another stipulation was, that the people of Troy must take at least twenty-five thousand dollars of the town bonds, and give him ninety cents on the dollar for them; unless he could make this turn he represented that he would not be able to go on with the work.

This the Troy party also agreed to, but they never took but about fifteen thousand dollars of the bonds; all the terms of the arrangement being thus understood, though as between the town and Blackman, not being put into writing, the latter went on with his work, and completed it so that it was ready for the cars to run on the road on the 9th of June, 1870.

The town authorities, that is, the intendant and council, meantime issued the sixty-five thousand dollars of bonds, and received their sixty-five thousand dollars of stock, which the city of Troy (the town having since been incorporated into a city) still holds, and upon which it is represented with the other stockholders in the railroad company. But more than all the value of the stock (whatever that may be), the city of Troy has the railroad as an accomplished fact, terminating in the town, and bringing to it a largely increased trade and a great increase

62 of population and wealth, at least four or five fold in advance of its former condition, and in a proportion that cannot be computed in advance of what its condition would have been, had the railroad been constructed on the route originally contemplated.

This is an outline of the historical facts of the case as the court recollects the evidence, and respecting which there is really no serious controversy. It is adverted to for the purpose of throwing light upon the transactions and laws whose fidelity are brought in question in this trial, and will be corrected by the recollection of the jury, if not accurate in every detail. The bonds sued on are part of the sixty five thousand dollars of bonds issued by the town of Troy, in the transaction before stated. The defenses set up are of various kinds:

1st. It is objected that the town council of Troy had no authority to issue the bonds in question, because no election was ever properly held to authorize the issue, and because no stock in the Mobile and Girard R. R. Co. was ever subscribed, both of which were necessary preliminaries to the issue of the bonds.

63 An examination of the laws giving authority to the town of Troy to take stock in the Mobile and Girard R. R. Co., and to issue bonds in payment thereof, is necessary to understand the validity of the objection.

Here read the laws, namely, act of Oct. 8th, 1868, sections 34 and 5, page 14, and act of Dec'r 8th, 1868, sect. 34 and 5, page 395–396; also section 8, page 397.

Our opinion is that the election was notified and held in substantial compliance with the laws. The act of Dec'r 8th, 1869, did not require that the order for election should be made or that notice thereof should be given after that date, but that the election should be held after that date and within three months thereof. It was passed in confirmation of the law of Oct. 8th, and more effectually to carry out the purposes thereof, and was not intended to mollify any proceedings under it. Our opinion also is that the objections as to the description of electors in the order of the council, if it ever had any force, was cured by the healing acts subsequently passed. Our opinion also is and we charge that an actual manual subscription was not essential. If an arrangement was made in compliance with law by which the town was to advance its bonds and to have stock therefor, although that arrangement
64 might not have been legally carried out by one party or the other, yet when so carried out it became just as valid a transaction as if an actual subscription had been made and the seal of the town had been solemnly attached thereto.

In this case the bonds were advanced and stock was retained therefor, and the road was actually built and the whole arrangement was carried out and completed by the parties, and it was just as much a substantial compliance with the law as if the subscription had been put upon paper.

We charge further that if there was any informality or irregularity in these transactions they were all cured by the acts of Dec'r 15th, 1869, and January 20th, 1870, the latter acts at least being passed after the actual issue both of the bonds and the stock. As a completed transaction it was not improperly spoken of as a subscription of stock and an issue of bonds by the town. In substance and in common acceptance it would rightly be so designated and spoken of, and the laws referred to fully confirm it and cure all defects of form.

65 2nd. It is objected, however, that the entire transaction was vitiated and made absolut'ly void by the fact that Jones was acting as intendant of the town and as a joint contractor with Blackman. This was so in the latter part and closing up the agreement, and as a general rule it is true that a man cannot thus act as agent for a corporation or municipality in matters where he is personally concerned in interest against the interest of his constituents. This would enable him to be both bargainor and bargainee. But it is not universally true that a man may not have contracts with a company of which he is a member. On the contrary, it is of every-day occurrence, both in private partnerships and in incorporated companies, and it would be extremely disastrous if it could not be lawfully done.

It often happens that a corporation or a director is the only person from whom the joint concern can advantageously obtain raw material or the use of property or other accommodations, which they imperatively need and require, and it would be extremely inconvenient if they could not lawfully deal with him. It is only essential that the uttermost good faith should be observed and that the transaction should be fully
66 and fairly understood. Our opinion is, therefore, and we charge that the fact of Jones' interest in the contract with Blackman was not alone and of itself sufficient to nullify and make void the agreement which was made between them and the town. The transaction is to be judged with all its circumstances, and if, taking them all into consider-

ation, the jury should be of opinion that any unfair advantage was taken by Jones, or that any fraud or concealment was practiced against the town of Troy, the agreement was void and of no effect, and the bonds constitute no ground of action, and the verdict must be for the defendant. The bonds not being commercial paper the holders of them stand in no better plight than Jones or Blackman themselves would do if they were the plaintiffs instead of Evans, Gardner & Co.

We further charge that so far as the situation of Jones as being connected with both parties had in itself alone, irrespective of any fraud practiced against the town, any effect by mere operation of law
67 to invalidate the contract, the legal invalidity was cured by the act of January 20, 1870, entitled "An act to legalize and make valid the acts of the corporate authorities of the town of Troy, in subscribing to the capital stock of the Mobile and Girard Railroad and issuing bonds for the payment thereof." Laws of 1869-'70, p. 39.

3rd. It is objected that the plaintiffs have no right to sue on the bonds; that they have no such title to them as enables them, under the laws of Alabama, to sustain a suit.

The solution of this point depends upon the laws of Alabama, relating to suits on such instruments, and upon the manner in which the plaintiffs acquired and held the bonds.

As the action now stands, the plaintiff having stricken out the first count, the suit is for three installments due on sixty-three of the bonds, each bond being for $100, and each installment being for $10, and *and* the interest due at the same time. That is, the plaintiffs sues for $30, of principal on each bond, amounting in all to $1,890, and the interest, amounting to about $1,700—in all about $3,600, with interest on the entire sum to the present time. The calculations will be furnished by counsel.
68

The manner in which the bonds came to the hands of the plaintiffs the jury will remember.

It was testified by Jones that after the bonds were executed and placed in his hands for delivery, he gave to Blackman, as the work progressed, what he considered Blackman's share of the bonds, and retained a like amount for himself.

Partnership funds or property is always subject to division and separate appropriation by the partners. It is a very common transaction. The jury will decide upon all the evidence taken together, whether the bonds were divided between Blackman and Jones. If they were, then each was entitled separately to the share alloted to him, and had the right to do with them as he saw fit. If Jones thus became entitled to his part of the bonds, he had a right to dispose of them as he did to the plaintiffs in this action.

69 The transaction between Jones and the plaintiffs is evidenced by a written paper executed between them. The court has examined that paper, and see in it nothing that does not appear to be entirely fair and proper. By it Jones assigned the bonds in suit, and others (120 in all) to the plaintiffs, and guaranteed the payment thereof, and it was agreed that if the plaintiffs should obtain more upon them than enough to pay his indebtedness to them (at that time about $3,500, and afterwards increased to about $4,200), the surplus should be returned to him, Jones.

The result of this arrangement was that Jones transferred this interest in the bonds to the plaintiffs, by way of conditional payment of his

debt, to operate as payment as far as the money collected thereon should go. He also guaranteed the bonds, but that guaranty did not affect the nature of the plaintiffs' title to and property in the bonds. The bonds (as guaranteed) became theirs, but subject to the condition of refunding to Jones any surplus that might be collected thereon after
70 paying the amount of his indebtedness to the plaintiffs, with interest, expenses, and lawyers' fees.

3. Now the defendant says that this is not sufficient to enable the plaintiffs to sue on the bonds. The following sections of the code of Alabama are referred to as affecting this question:

Here read ss. 1837, 1838, as to instruments payable to "bearer," and the mode of transferring the legal title (uncommercial paper). S. 2523 as to right to sue.

Our opinion is that the person who is really and beneficially interested may sue, whether he has the legal title or not, and that S. 2523 applies to the case.

Now, it is apparent that the plaintiffs are beneficially interested to the extent of their debt. The amount now sued for will not more than cover this debt, and we charge the jury that they are entitled to recover this amount, although they actually hold a large amount of additional bonds in their hands. If they succeed in recovering the money due on the bonds now sued on, supposing it pays their debt, it will then
71 be their duty to restore to Jones the balance of the bonds in their hands. Meantime their right to recover the amount now in controversy is full and complete, if the jury find the facts before submitted to them in favor of the plaintiffs.

After the foregoing charge was delivered the counsel for defendant asked the court to give the following instructions to the jury, namely:

If, before the plaintiffs ever had or made any claim to the bonds mentioned in the complaints, Homer Blackman and U. L. Jones were partners, and were and ever since have been citizens of Alabama; if, whilst Blackman and Jones were partners, the said bonds became the partnership property of said Blackman and Jones before the plaintiffs ever had or made any claim to said bonds, then upon these facts the presumption arises that said bonds continue to be the partnership property of said Blackman & Jones until said presumption is overturned by proof to the contrary; and the burden of disproving said presumption is upon
72 the plaintiffs. And if said partnership of Blackman & Jones has never been dissolved, and if there has been no settlement between said partners, and no balance struck between them as to said bonds, then the mere fact (if it be a fact) that said Jones had the custody of all the bonds mentioned in the evidence, and from time to time sent to Blackman what Jones supposed to be about Blackman's share or portion of the whole of said last-mentioned bonds and retained the others of said bonds, and if the bonds mentioned in the complaint in this suit were part and parcel of the bonds so retained by Jones; and if whilst Jones was so retaining them he executed, in New York, to the plaintiffs the instrument dated , 1872, and at the same time delivered in New York to the plaintiffs the said bonds described in the complaint, and if the plaintiffs have no other right or title to said bonds here sued on then they derived from said last-mentioned instrument and delivery, then upon this state of facts the plaintiffs are not entitled to recover in this action.

73 This instruction the court declined to give further than as they

had charged upon the points therein mentioned in the general charge to the jury.

May 27th, 1875.

J. P. BRADLEY, *J.*

Filed May 27th, A. D., 1875.

J. W. DIMNICK, *Clerk.*

To each sentence of the foregoing charge of the court, the defendant duly excepted and offered to the court to state at length the reasons, grounds, and causes in law, for each exception to each sentence of said charge of the court.

But the court as well as the attorneys of the plaintiffs dispensed with and waived any statement of the reasons, grounds, or causes in law for any of said exceptions to said charge of the court, or to any part or sentence thereof.

The defendant then and before the jury retired asked the court to give to the jury the following

Written charge.

"If, before the plaintiffs ever had or made any claim to the
74 bonds mentioned in the complaint, Homer Blackman and N. L. Jones were partners and were and ever since have been citizens of Alabama, if, whilst Blackman and Jones were partners the said bonds became the partnership property of said Blackman and Jones before the plaintiffs ever had or made any claim to said bonds, then upon these facts the presumption arises that said bonds continue to be the partnership property of said Blackman and Jones, until such presumption is overturned by proof to the contrary, and the burden of disproving said presumption is upon the plaintiffs, and if said partnership of Blackman and Jones has never been dissolved, and if there has been no settlement between said partners, and no balance struck between them as to said bonds, then the mere fact (if it be a fact) that said Jones had the custody of all the bonds mentioned in the evidence, and from time to time sent to Blackman what Jones supposed to be about Blackman's share or portion of the whole of said last-mentioned
75 bonds, and retained the others of said bonds; and if the bonds mentioned in the complaint in this suit were part and parcel of the bonds so retained by Jones; and if whilst Jones was so retaining them he executed in New York to the plaintiffs the instrument dated , 1872, and at the same time delivered in New York to the plaintiffs the said bonds described in the complaint, and if the plaintiffs have no other right or title to said bonds here sued on than they derived from said last-mentioned instrument and delivery, then upon this state of facts the plaintiffs are not entitled to recover in this action."

The court refused to give the written charge thus asked by defendant, and to this refusal of the court the defendant duly excepted, and tenders this the bill of exceptions of defendant, which is signed, sealed, and delivered as such by the presiding judge in term time, and on this the 27th day of May, 1875, and made part of the record in this cause.

[SEAL.] JOHN BRUCE, *Judge.*

76 EXHIBIT A.

In the circuit court of the United States at Mobile, Alabama.

EVANS, GARDNOR & CO.
vs.
THE MAYOR & COUNCILMEN OF TROY.

Arthur Bingham states that in the month of May, 1873, he, as the

treasurer of Alabama, and David P. Lewis, as governor of Alabama were in New York City on business of great importance to said State.

That whilst they were there Samuel F. Rice arrived in said city; that on being informed that said Rice could not stay in said city but a very short time, but was under obligation to return to Alabama and go to Mobile to defend this cause, unless an arrangement for its continuance could then be made, Governor Lewis requested that application be made to the plaintiffs, or one of them, to allow a continuance of said cause so as to enable said Rice to aid, as far as he could, the governor in the public business of said State which had induced the governor to go to New York, and that information should be given to plaintiffs, or one of
77 them, that the governor desired said Rice to remain in New York City at that time to aid the governor in said public business as far as he was able to do.

In consequence of what appears above, the said Bingham and Rice went to the store of plaintiffs, in said city of New York, in May last, to get a continuance of said cause for the purpose above stated, and then and there said Rice made known to M'r Evans, the leading member of plaintiffs' firm, the matters above stated, and requested him to agree to a continuance of said cause, or to instruct plaintiffs' attorneys (Mess'rs Stone & Clopton,) to allow a continuance.

M'r Evans, after some hesitation, declined to make such agreement himself, stating that he would not take the control of the case from his lawyers, but he should make no complaint if his lawyers should allow a continuance under the circumstances disclosed above.

Thereupon, and on the same occasion, there occurred a conversation about the bonds sued on in this case, the circumstances under which they came into possession of the plaintiffs, and the object or purpose for which they held them.

My best recollection of the substance of what Evans said in
78 that conversation is as follows:

That said Evans stated that U. L. Jones, of Pike County, Alabama, turned the said bonds over to plaintiffs as security for his indebtedness to plaintiffs for goods sold to Jones; that the said indebtedness of Jones to plaintiffs was some $7,000.00 or $8,000.00, whilst said bonds turned over by him to plaintiffs were for a much larger sum; that plaintiffs knew Jones at the time, and had such confidence in him that they would have sold him the goods he wanted to buy without any security; that things in the South had got worse since they obtained said bonds; that they had no other interest in said bonds except for the security of said indebtedness of Jones; that if that indebtedness were paid they would gladly give up the bonds; that Jones was bound all the time for his said indebtedness, and he (Evans) believed all the while had been, and yet remained, good, and would pay, even if nothing was realized on the bonds.

ARTHUR BINGHAM.

The foregoing, as far as legal & relevant matter, may be read in evidence as if sworn to on the stand on the trial of the above-entitled cause.

January 21st, 1874.

STONE & CLOPTON, *for Pl'ffs.*

79 EXHIBIT B.

At a meeting of the town of Troy, Alabama, Dec'r 3rd, 1868—

Present, U. L. Jones, intendant, and H. S. Urquhart, John R. Goldthwaite, Joel D. Murphree, councilmen—

The following ordinance was offered by Councilman Urquhart, and passed by a unanimous vote, to wit:

1st. Be it ordained by the council of the town of Troy, That on Thursday, the 17th day of Dec'r inst., an election be held to ascertain the sense of the real-estate owners of said town on the question of subscription to the Mobile and Girard Railroad, as provided by a late act of the general assembly of the State of Alabama.

2nd. Be it further ordained, That said election shall be held and conducted in respects as others provided by law, owners of real estate residing within the corporate limits of said town only being allowed to vote, the voting to be done by ballot, "Subscription" or "No subscription," as the voter may desire, being written on each ticket.

80

3rd. Be it further ordained, That W'm R. Rice, Joseph B. Fannon, and John D. Gardner be, and they are hereby, appointed to conduct or manage said election, whose duty it shall be to make and certify correct returns of said election, accompanied by the poll-list, tally-sheet, and ballots, within three days after, to the intendant of said town.

4th. Be it further ordained, That in case of the failure of any one or more of the managers hereinbefore appointed to attend and hold said election, the place or places of such defaulting managers may be filled by any real-estate owner or owners residing in said town.

5th. Be it further ordained, That ten days' notice of said election be given by posting in three conspicuous places in said town.

The council then adjourned.

Approved.

U. L. JONES, *Intendant.*

Council of the town of Troy met Dec'r 22nd, 1868.

Present, U. L. Jones, intendant, H. S. Urquhart, W. H. Biggs,

81

J. R. Goldthwaite, and J. D. Murphree, councilmen.

Minutes of the meeting of the 3rd inst. read and approved.

Intendant U. L. Jones lay before the council the certified returns of an election held on the 17th inst., as ordered at the meeting of the 3rd inst., upon the question of subscription or no subscription to the capital stock of the Mobile and Girard Railroad, for the purpose of grading said road to Troy, which returns show that said election resulted in thirty-two votes being cast for subscription, and none voting no subscription.

Councilman Goldthwaite presented a paper writing, whereby it appears that a large majority of the real-estate owners of Troy have signified their wish that bonds of said town be issued, pursuant to a late act of the legislature of Alabama, to the amount of fifty thousand dollars, and have also expressed their willingness to purchase one-half of those bonds in aid of the project of extending the Mobile & Girard Railroad to Troy.

Whereupon, on motion of Councilman Goldthwaite, it was resolved, That bonds be issued by the town authorities of the town of Troy

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for fifty thousand dollars ($50,000.00), bearing interest at eight per cent. per annum, of such size as the intendant may deeme proper, for the purpose of extending the Mobile and Girard Railroad from a point on the route of said road as at present located, above Faulk's Bridge, to the town of Troy; said bonds having ten years to run, and to be disposed of as may hereafter be determined by the municipal authorities of said town of Troy.

On motion of Councilman Urquhart, the paper above spoken of, indi-

cating the wish of the real-estate owners, was ordered spread upon the minutes, which reads as follows:

Whereas the prosperity of the town and the surrounding country depends materially upon the speedy completion of the Mobile and Girard Railroad to this point; and whereas it is vitally important that immediate steps be taken to secure that end:

Resolved, 1st, That it is the duty of all persons whose property will be increased in value, or whose interest will in anywise be advanced thereby, whether real-estate owners or otherwise, whither citi-
83 zens of the town or country, nobly to come forward and give that encouragement and aid without which our object can never be attained, demonstrating, by such course, that we are unwilling to reap advantages without contributing our part towards bringing them about.

Resolved, 2nd, That we endorse and approve of the following plan of operations and will heartily co-operate therein:

1st. That the municipal authorities of the town of Troy issue bonds to the amount of fifty thousand dollars ($50,000), as authorized by a late act of the general assembly of Alabama, now in session.

2nd. That the citizens of the town of Troy shall purchase twenty five thousand ($25,000) of these bonds, each taking bonds in proportion to the real estate owned by him, and in no case to exceed one-half the present value of his or real estate.

3rd. That when it is necessary to borrow money for the purchase of said bonds the entire unincumbered real estate of the parties borrowing to be mortgaged, to secure the payment of the money borrowed,
84 and the bonds purchased therewith to be turned over to the mortgagee or held in trust by the town authorities for him or her as collateral security.

4th. That every real estate owner in Troy were a bondholder no difficulty would be found in negotiating the "remaining" twenty-five thousand dollars of bonds or inducing contractors to take them at par value for grading or other work.

5th. Resolved, That our friends in the country be earnestly urged to subscribe to the capital stock of the company such amounts as their respective interests might suggest or their liberality prompt, or, where this is declined, to purchase bonds of the town.

6th. Resolved, That all persons favoring the foregoing plan and disposed to co-operate therein be required to sign these resolutions.

M'r's M. S. Murphree.	T. K. Brantley.	H. L. Graves.
J. R. Goldthwaite.	H. R. Park.	J. P. Nall.
T. K. Malbries.	A. A. Griffin.	M'r's Ann Thompson.
Merphee & Jones.	A. P. Love.	R. H. Lane.
M'r's M. A. Talbert.	85 W. M. Murphree.	J. K. Murphree.
H. S. Urguhart.	D. W. Liter.	J. C. Cade.
Miss Nan Ruffin.	W. H. Strickland.	W. H. Biggs.
W. C. Wood.	R. W. Prust.	S. D. Wilson.
James M. Long.	L. B. Murphree.	H. D. Boyd.
S. D. Smelie.	David Caskey.	J. B. Fannin.
J. W. Scarbrough.	Eliza Henderson.	John P. Allred.
W. M. Love.	E. G. Ford.	W. H. Parks.
R. J. Higgins.	Jesich Davis.	J. J. Blair.
W. Kelser.		

Council then adjourned.
Approved.

U. L. JONES,
Int'd't.

Council met Jan'y 13th, 1869.

Present, U. L. Jones, intendant, and Councilmen Goldthwaite, Biggs, Urquhart, and Murphree.

On motion of Councilman Goldthwaite, the town authorities were instructed to dispose of the Troy bonds at ninety cents on the dollar for cash in payment of railroad subscription and at par value to those securing the payment of their notes given for money to pay said subscription, the notes being made due Dec'r 1st, 1869, with interest from date. The council then adjourned.

Approved.

U. L. JONES,
Int'd't.

86 Council met Jan'y 16th, 1869.

Present, U. L. Jones, intendant, and Councilman Urquhart, Goldthwaite, and Murphree.

On motion of Councilman Murphree, it it was ordained by the council that the bonds of the town of Troy, the country subscription and cash, be placed in the hands of Intendant Jones, with full power to negotiate the same in any way he may think best for the purpose of securing the extension of the Mobile & Girard Railroad to Troy, and also with full power to make any other arrangements necessary for the accomplishment of that object.

Council adjourned.

Approved.

U. L. JONES,
Int'd't.

Council met Feb'y 16th, 1869.

Present, U. L. Jones, intendant, and Councilmen Goldthwaite, Biggs, & Murphree.

On motion of Councilman Goldthwaite, it was ordained that the corporate authorities be authorized to issue bonds of the town of Troy to the amount of fifteen thousand dollars ($15,000), drawing interest from
87 date at the rate of eight per cent. per annum, in addition to the ($50,000) fifty thousand dollars heretofore authorized to be issued, for the extension of the Mobile and Girard Railroad to Troy.

Council then adjourned.

Approved.

U. L. JONES,
In'd't.

Council meeting Monday, June 20th, A. D. 1870.

Present, his honor the mayor and board of councilmen.

His honor the mayor called the attention of the council to the fact that the passenger and freight trains of the M. & G. had both run into Troy, and that 10 per cent. and one year's interest on the bonds of the city were due, and advised that the necessary steps be taken to meet the same promptly.

Col. Blackman, the contractor on the M. & G. R. R. from the deflection to Troy, was present, and notified the council that he had completed his contract, and that the road was in running order to Troy; regrets the disappointment, both to himself and the citizens of Troy, on
88–89 account of the road not reaching here sooner, and stated whilst other causes conspired to detain the road, a very important one was that the work had proved to be twenty per cent. heavier than the

estimate under which he took the contract made it, and asked the council to meet their indebtedness on bonds promptly.

M'r Worthy urged the council to proceed at once to the collection of the taxes on real estate, in order to pay the 10 per cent. and interest now due on the bonds of city, and said that the honor and credit of the city demanded that this indebtness be met and discharged promptly, and said that he said what he did as a citizen of Troy, zealous of her honor, and not as the feed attorney of Col. Blackman or any one else.

Council meeting July 11th, 1870.

Present, his honor the mayor, and Councilmen Park, Cade, & Lane.

His honor the mayor called the attention of the council to the fact that the city owned a considerable amount of stock in the M. & G. R.
90 R., and urged that the council appoint some suitable person to represent said stock in the stockholders' meeting on the 6th inst.

On motion of councilman Park, the hon'l' A. N. Worthy was appointed the duly authorized proxy of the city to represent the city stock in the M. & G. R. R. in the stockholders' meeting on the 6th inst., and his honor appointed Councilman Lane a committee of one to wait on M'r Worthy and solicit his acceptance of the appointment, and report to the council on to-morrow night.

Council adjourned.

Approved.

U. L. JONES, *Mayor.*

H. C. WILEY, *City Clerk.*

Council meeting Sept. 26th, 1870.

Present, his honor Mayor Jones and Councilmen Park, Urquhart, and Cadle.

Mayor Jones stated that the meeting had been called for the purpose of determining how and when to begin the collection of taxes on real estate for the purpose of making such payment as the city could on the first instalment now due on the city bonds.

On motion of Councilman Urquhart, the clerk was ordered to
91 proceed, on and after the 10th day of October next, to the collection of the taxes now due, both real and personal property, having first given ten days' notice, by posting notices at the post-office, court house, and Rice's bulletin-board.

Council adjourned.

Approved.

U. L. JONES, *Mayor.*

H. C. WILEY, *City Clerk.*

Council meeting Feb'y 21st, 1871.

Present, his honor the mayor, and Councilmen Henderson, Love, Higgins, and Wilson.

His honor the mayor then called the attention of the council to the suit recently instituted by A. T. Lockard, and a number of other citizens, restraining the council and clerk from further efforts to collect the taxes on real estate.

When it was moved and carried that the council would adopt the necessary means for the defence of the same.

It was also moved and carried that the mayor, and two council-
92 men, to be selected by him, be and constitute a committee counsel to take any necessary steps to defend said suit.

Approved.

E. B. WILKINSON, *Mayor.*

H. C. WILEY, *City Clerk.*

Council meeting Feb'y 25th, 1871.

Present, his honor the mayor and Councilmen Low, Henderson, Higgins, and Wilson.

The mayor then reported that he had selected Councilmen Henderson and Low to act with him as committee to employ counsel and means to defend the injunction suit against the council and clerk, brought by A. T. Lockard and others, restraining them from further proceeding to collect the tax on real estate.

The committee, through its chairman, reported that they had employed Henry C. Wiley as counsel at this place and, through M'r U. L. Jones, had confer'ed with the firm of Mess'rs Stone & Clopton, of the city of Montgomery, and read a letter from M'r Clopton, of said firm, in reference to their being retained in said suit. The report of the committee was received and adopted.

93 On motion, it determined to employ the firm of Mess'rs Stone & Clopton & Clanton, of Montgomery, and Henry C. Wiley, of Troy, to represent the city in said suit, and their compensation to be fixed when the services are rendered, according to the agreement of M'r Clopton as contained in his letter to the mayor of date Febr'y 24th, 1871, and endorsed on his own behalf by said Wiley, and the said letter is ordered filed and preserved by the clerk for future reference.

Adjourned.

Approved.

E. B. WILKINSON,
Mayor.

H. C. WILEY, *City Clerk.*

Special councilman meeting, Nov'r 9th, 1872.

Present, his honor the mayor and Councilmen Robert, Hodges, and Williams.

On motion of Councilman Hodges, the clerk was instructed to proceed with the collection of the tax on real estate in the city of Troy, after giving twenty days' notice by printed notices at different places in the city.

Council then adjourned.

N. W. GRIFFIN,
Mayor.

L. H. BOWLES, *City Clerk.*

94 Special council meeting, Dec'r 20th, 1872.

Present, his honor the mayor and Councilmen Brantley, Andrews, Solomon, and Wilson.

Councilman Solomon offered the following resolution, which was adopted:

Resolved, 1st, That the collection of the city tax on real estate, for the purpose of paying the bonds known as the Troy bonds, be postponed indefinitely.

Resolved, 2nd, That the following-named citizens, to wit: E. B. Wilson, W. C. Wood, J. K. Muphre, John P. Hubbard, J. R. Goldthwaite, A. T. Lockard, W. H. Strickland, R. H. Park, J. P. Hill, & W. R. Rice, be requested to act in concert with the mayor and councilmen for the purpose of negotiating or devising some means of paying or compromising the Troy bonds.

Council adjourned.

N. W. GRIFFIN,
Mayor.

L. H. BOWLES, *City Clerk.*

95 Special council meeting, Jan'y 13th, 1873.

Present, his honor the mayor and Councilmen Brantly, Anderson, & Wilson.

On motion of Councilman Andrews, his honor the mayor and Councilman Brantley were appointed to go to Montgomery and confer with Mess'rs Stone & Clopton in reference to a continuance in the case of Evans, Gardner & Co. vs. The Mayor and Aldermen of Troy, in the United States district court, and in case Stone & Clopton will not agree to a continuance of said cause, they are authorized to employ counsel to defend said suit.

Council then adjourned.

N. W. GRIFFIN,
Mayor.

L. H. BOWLES, *City Clerk.*

Special council meeting, Jan'y 16, 1873.

Present, his honor the mayor & Councilmen Brantley, Andrews, Wilson, & Solomon.

Councilman Solomon offered the following preamble and resolution; which was adopted:

96 Whereas Mess'rs Evans, Gardner & Co., of New York, have sued the mayor & councilmen of Troy, for the interest and installments due on certain bonds of the city of Troy, in the U. S. district court at Montgomery, and whereas said court will be in session on the 20t' inst., being four days from this:

Therefore, be it resolved by the mayor and councilmen of Troy, That a committee of two be appointed by his honor the mayor to go to Montgomery, and, if possible, secure a continuance of said cause, in order that the claim evidenced by said bonds may be settled on compromise; and, in the event said committee fail in this, they are authorized to employ a lawyer in the city of Montgomery to defend said suit.

Councilmen Brantley and Andrews appointed.

N. W. GRIFFIN, *Mayor.*

Regular council meeting, Feb'y 1st, 1873.

Present, his honor the mayor and Councilmen Brantley, Andrews, Wilson, and Solomon.

97 Councilmen Brantley and Andrews, committee appointed to go to Montgomery to procure a continuance in the case of Evans, Gardner & Co. vs. The Mayor & Councilmen of Troy, submitted the following report in writing:

We, the undersigned, committee appointed to go to Montgomery, for the purpose of having the case of Evans, Gardner & Co. vs. The Mayor and Councilmen of Troy continued at the present term of the U. S. district court, or in failure thereof to employ counsel to defend the same, beg leave to report as follows:

We having confer'ed with Mess'rs Stone & Clopton, attorneys for the plaintiffs in said suit, and failing to make any satisfactory arrangements for a continuance of the same at the present term of the U. S. district court at Montgomery, in which court said suit is pending, we employed the firm of Rice, Jones & Wiley to investigate said suit, and if after investigation they thought a valid defense could be set up, to defend the same upon the terms mentioned in a letter to your

98 committee from Mess'rs Rice, Jones & Wiley, which is herewith submitted.

T. K. BRANTLEY,
G. W. ANDREWS,
Committee.

Adjourned.

N. W. GRIFFIN, *Mayor.*

Special council meeting, June 4th, 1873.

Present, his honor the mayor and Councilmen Brantley, Andrews, Wilson, and Solomon.

Councilman Andrews offered the following resolution:

Resolved by the mayor & councilmen of the city of Troy, That they pay to the firm of Stone & Clopton and H. C. Wiley, the solicitors for the respondent in the cause now pending in the chancery court at Troy, wherein A. T. Lockard et al. are complainants, and the Mayor & Council of the City of Troy are respondents, a reasonable fee for their services rendered by them in said cause as solicitors, and that they be discharged by said respondents from any further attention to said cause.

Upon the question being put upon adoption of the resolution, it was adopted.

Councilman Andrews offered the following resolution, which was adopted:

99 Be it resolved by the mayor and town council of the town of Troy, That they employ W. L. Roberts, as solicitor, at a fee of twenty-five dollars, to represent the respondent in the cause now pending in chancery court at Troy, wherein H. T. Lockard et als. are complainants, and the Mayor and Town Council of Troy are respondents.

The council then adjourned.

W. L. WILSON, *Councilman,*
Presiding in absence of the Mayor.

L. H. BOWLES, *City Clerk.*

THE STATE OF ALABAMA,
Pike County:

I, N. W. Griffin, mayor of the city of Troy, Ala., hereby certify that the foregoing pages, numbered from one to seventeen, both inclusive, contain a full, true, and complete transcript of the minutes of the town and city council of the city of Troy, in relation to the issuing and negotiating the bonds known as the Troy bonds, in aid of the Mobile & Girard Railroad, as the same appears of record in my office.

And I further certify that there has been no other resolution, motion, or ordinance passed by the town council or city council that
100 appears on the minutes of said council in relation to the issuing and negotiating said bonds than those contained in the foregoing transcript, and that said transcript contains a full, true, correct, and complete statement of all the matters and things done by said town council and said city council in relation to the issuance and negotiation of said bonds, and the matters and things had and done in relation to the subscription by the mayor and councilmen of Troy to the capital stock in the Mobile & Girard Railroad, that appears on said minutes.

Given under my hand and seal this 8th day of January, 1874.

[L. S.] N. W. GRIFFIN,
Mayor of Troy.

It is admitted that the foregoing pages fully and truly sets forth all that the books of the corporation contain, show, or was ever done by the council of the town or city of Troy in relation to the bonds sued on by Evans, Gardner & Co., in their suit now pending against the said town or city (the name of which is stated in said suit), in the U. S. circuit court at Mobile, Alabama.

STONE & CLOPTON,
For Pl'ffs.

101 EXHIBIT C.

NEW YORK, *Sept. 26th*, 1872.

Memorandum of agreement this day made and entered into between Mess'rs Evans, Gardner & Co., of the city of New York, and U. L. Jones, of the city of Troy, Pike County, Alabama, witnesseth:

That the said Evans, Gardner & Co. have sold to the said U. L. Jones, about three thousand five hundred dollars' worth of dry-goods, &c., for which the said U. L. Jones doth hereby transfer, assign, and deliver unto the said Evans, Gardner & Co. (120) one hundred and twenty bonds of the city of Troy, Alabama (known as the Troy bonds to aid in the construction of the Mobile and Girard Railroad), of one hundred dollars each, numbered as follows:

№ 276, 277, 278.....3 bonds (three);
№ 164 to 217, inclusive, 54 " (fifty-four);
№ 570 to 617, inclusive, 48 " (forty-eight);
№ 633 to 647, inclusive, 15 " (fifteen);

Total.....120 bonds (one hundred and twenty);

together with the interest due thereon.

It is further understood and agreed by the parties that the said U. L. Jones doth hereby endorse the said bonds to the said Evans,
102 Gardner & Co., and the said Evans, Gardner & Co. are to let the said U. L. Jones have goods as he, the said Jones, may require between now and the first day of January next, to the amount of eight thousand dollars, including those alre'dy bought.

And it is furthermore understood and agreed that the said Evans, Gardner & Co. shall have the right to sue on the principal and interest that is now due on the said bonds and that which becomes due in January, eighteen hundred and seventy-three.

The said Evans, Gardner & Co. agree, should they succeed in collecting more than will pay the said U. L. Jones' indebtedness to the said Evans, Gardner & Co., and all expenses of every kind, including lawyers' fees, the balance they, the said Evans, Gardner & Co., are to refund or pay over to the said U. L. Jones.

It is understood also that the said Evans, Gardner & Co. are not to be held responsible for any neglect in collecting or for any failure of any attorneys or other persons whomsoever.

But only to be held responsible for the monies that they, the said Evans, Gardner & Co., may receive. Said U. L. Jones guarantees the payment of said bonds and interest to said Evans, Gardner & Co.

103 Witness our hands this 26t' day of September, A. D. 1872.

EVANS, GARDNER & CO.
U. L. JONES.

Witness:
BENJ'N B. BLAKE.
W'M D. JACKSON.

Appeal bond.

Know all men by these presents that we, the mayor and councilmen of Troy, and undersigned citizens of *of* the city of Troy, in the county of Pike and State of Alabama, are held and firmly bond unto D. W. Middleton, clerk of the Supreme Court of the United States, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said D. W. Middleton, his heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, & administrators, jointly and severally, by these presents, sealed with our seals, and dated this 17th day of April, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately, at a circuit court of the United States for the middle district of Alabama, in a suit depending in said court between Evans, Gardner & Co., plaintiffs, and The Mayor and Councilmen of Troy,
104 a judgement was rendered against the said The Mayor and Councilmen of Troy, and the said Mayor and Councilmen of Troy having obtained a writ to remove the said cause to the Supreme Court of the United States and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the judgment in the *in the* aforesaid suit:

Now the condition of the above obligation is such that if the said obligors shall well and truly pay or cause to be paid to the said D. W. Middleton, his heirs, executors, administrators, or assigns, all such fees as shall accrue to him, the said D. W. Middleton, clerk as aforesaid, and charged to the said The Mayor and Councilmen of Troy, defendants as aforesaid, in the prosecution of their said suit, then the above obligation to be void; otherwise to remain in full force and virtue.

THE MAYOR & COUNCILMEN OF TROY. [SEAL.]
J. P. NALL. [SEAL.]
W. W. JONES. [SEAL.]
S. J. SEALS. [SEAL.]
JOHN O. BROWN. [SEAL.]
A. T. LOCKARD. [SEAL.]
D. WILLIAMS.
T. S. COPELAND. [SEAL.]
M. CONNOR. [SEAL.]
J. R. GOLDTHWATE. [SEAL.]
JOHN F. JONES.
T. K. BRANTLEY. [SEAL.]

Approved April 17th, 1877.

JOHN BRUCE,
Judge.

105 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the middle district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgement of a plea which is in the said circuit court before you, between Evans, Gardner & Co., a firm composed of James W. Evans, Richard Gardner, William B. Milton, and W. R. Hutcheson, partners doing

business together under the firm-name and style of Evans, Gardner & Co., citizens of the State of New York, plaintiffs, and the Mayor and Councilmen of Troy, a corporation duly created and organized under the laws of the State of Alabama, defendants, a manifest error hath
106 happened, to the great damage of the said The Mayor and Councilmen of Troy as aforesaid, defendants as aforesaid, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgement be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the
107 Supreme Court, the 17th day of April, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] J. W. DIMMICK,
Clk of the Circuit Court of the United States in and for the Middle District of Alabama.

Allowed by—

JOHN BRUCE, *Judge.*

Filed April 20th, A. D. 1877.

J. W. DIMMICK, *Clerk.*

Citation.

UNITED STATES OF AMERICA:

To Evans, Gardner & Co., a firm composed of James W. Evans, Richard Gardner, William B. Melton, and W.R. Hutchison, partne's, doing business together under said firm name and style of Evans, Gardner & Co., citizens of the State of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle
108 district of Alabama, wherein The Mayor & Councilmen of Troy, a corporation duly incorporated under and by virtue of the laws of the State of Alabama, are plaintiffs in error, and you are defendants in error, to show cause if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Bruce, judge of the district court of the United States, this 20th day of April, A. D. 1877.

[SEAL.] JOHN BRUCE,
Judge.

Received in office of U. S. marshal May 2nd, 1877.

GEORGE TURNER,
U. S. Marshal,

Executed by the serving the within copy on Mess'rs Stone & Clopton, May 2nd, 1877.

GEO. TURNER,
U. S. Marshal,
P'r F. JOST, *Dep.*

Returned executed, and filed the 4th day of May, A. D. 1877.
J. W. DIMMICK, *Clerk.*

Acceptance of service by D. Clopton.

109 I, David Clopton, one of the firm of Stone & Clopton, who appear as the attorneys of record for the said Evans, Gardner & Co., the plaintiffs in the original suit, and who as such attorneys of said Evans, Gardner & Co. recovered the said judgment for them, from and in respect to which the said writ of error mentioned in the within and foregoing citation was sued out and issued, do hereby, as attorney of said Evans, Gardner & Co., now defendants in error, accept service of the within and foregoing citation, and waive further notice or citation as to the said writ of error.

May 15th, 1877.

DAVID CLOPTON,
Att'y for Evans, Gardner & Co.

Witness:
J. W. DIMMICK, *Clerk.*

110 UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Joseph W. Dimmick, clerk of the United States circuit court for the middle district of Alabama, do hereby certify that the foregoing, contained on pages numbered from one to one hundred and ten inclusive, is a true and correct transcript of all the records and proceedings in said court in a cause pending therein, wherein Evans, Gardner & Co. are plaintiffs, and the Mayor and Councilmen of Troy defendants, as the same appears of record in said court.

In testimony whereof I have hereunto set my hand and the official seal of the said court this the 12th day of May, A. D. 1877.

[SEAL.] J. W. DIMMICK,
Clerk U. S. Circuit Court for the Middle District of Alabama.

(Indorsement on cover:) No. 826. The Mayor and Councilmen of Troy, pl'ff' in error, vs. Evans, Gardner & Company, a firm composed of James W. Evans, Richard Gardner, William B. Milton, and W. R. Hutcheson. M. Alabama C. C. U. S. Filed 8th October, 1877.